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ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY
ARISING FROM THE USE OF ASBESTOS IN ONTARIO

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APPEARANCES:

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Mr. D. Starkman	Asbestos Victims of Ontario
Miss L. Jolley	Ontario Federation of Labour
Mr. R. Evans	Johns-Manville

180 Dundas Street
Toronto, Ontario
Tuesday,
June 29, 1982

VOLUME 46



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ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY

ARISING FROM THE USE OF ASBESTOS IN ONTARIO

VOLUME 46

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VOLUME 46

THE FURTHER PROCEEDINGS OF THIS INQUIRY
RESUMED PURSUANT TO ADJOURNMENT

APPEARANCES AS HERETOFORE NOTED

DR. DUPRE: May we come to order, please?

This morning the Commission greets the return
of Dr. Paul Kotin.

Counsel, I am asking this question to you as much
as to Dr. Kotin, Dr, Kotin, of course, was sworn in the last time
he testified before us...do we and does he consider himself
still sworn in, or in need of a booster shot?

MR. LASKIN: Speaking for myself, as long as
Dr. Kotin considers himself still sworn, that is satisfactory
to me and that's in accordance with our ordinary rules of evidence.

DR. DUPRE: Thank you.

Is that your understanding, Dr. Kotin?

DR. KOTIN: Yes.

DR. DUPRE: Well, please, may I ask you to resume
the seat.

DR. PAUL KOTIN, PREVIOUSLY SWORN, RESUMES THE WITNESS STAND

DR. DUPRE: Proceed, counsel.

MR. LASKIN: Thank you, Mr. Chairman.

5 EXAMINATION-IN-CHIEF BY MR. LASKIN

Q. Dr. Kotin, the questions that I really want to direct to you today relate to your post as senior vice-president of health, safety and environment at Johns-Manville...at Manville Corporation.

10 A. I still call it Johns-Manville. You can't teach an old dog new tricks.

Q. All right. I take it you have assumed the post in 1974?

A. Correct.

15 Q. Can I ask you, did the post exist prior to you coming?

A. As it was constituted after I came, no.

Q. What was the...just briefly...the situation pre-1974?

20 A. Pre-1974, there were a series of operations related to health, safety and environment that were situated in different units of the organization, on a sensible basis in relation to what the units had as their responsibility and so on.

25 But the integration and the collecting of all of these elements in one program was accomplished coincidental with or as part of my coming and part of my understanding with the company prior to coming as to what would be my areas of responsibility, and what kind of an organizational structure would support that.

30 Prior to my coming, the program was analogous to what would have been in ninety-nine percent of the management world.

Q. When you say that, does that mean that prior

5 Q. (cont'd.) to your coming there was no senior officer or director of the company with overall responsibility for health, safety...?

A. No, there was a corporate medical director, as I say, as was the tradition in all management in all industrial settings where indeed a corporate medical record did exist.

10 In terms of the setup at Johns-Manville...or again Manville...after my coming, it was unique, and this is almost a Websterian definition: one - I was the only senior officer in, I would judge, all of the corporate world responsible... at an officerial level of a senior vice-president responsible for health, safety and environment, and this was a situation that had no precedent, therefore the organization and the structure of the program was developed...can I go to the board?

15 Will that help you?

Q. Well, sure. We have had in evidence, through Mr. Cashman, a sort of organization chart pre-1980 and post-1980, and you might want to look at that and confirm to us one way or the other whether that is accurate and whether your placing in both of those charts is accurate.

20

A. Yes.

Q. I don't want to deter you from going to board, Dr. Kotin.

A. No, no. Actually, this is fine.

25 No, what this shows is the organization of the corporation, and it shows the senior vice-president for health, safety and environment reporting to either the vice-chairman of the board or the chairman of the board. When the vice-chairman of the board's job was eliminated, I reported to the chairman of the board.

30 So this was, in terms of the total corporation, correct. I was a senior vice-president...the only senior vice-

A. (cont'd.) president in all of America.

Q. With health responsibilities?

A. With health responsibility.

The only senior vice-president in all of America that reported to the chairman of the board.

Now, let me look at the breakdown of the organization itself. Is that the...it doesn't give the internal breakdown.

The reason for the arrangement, I guess, was part of my bargaining when I came to work for the company.

Q. All right. Can you...would what you were going to put on the board show the internal breakdown?

A. Exactly.

Q. If that's what you are going to do, could you help us by doing that?

A. Sure, I would be delighted to.

Q. Just before you do that, perhaps we could... Linda is just copying down that chart so that we can preserve it for posterity for ourselves.

Does the situation, by the way, still pertain today? Is your position still unique in the sense...

A. As yet there is no successor for my position.

Q. I appreciate that, but in terms of your experience in the corporate world, have other companies followed suit?

A. No. The only other...will this bother you if I don't speak into the microphone?

No, there are some companies that have medical officers at the level of a corporate vice-president. I should emphasize that I came to work for Johns-Manville not as a senior vice-president, but as a corporate vice-president, the understanding being that after a year, if the marriage was going to be one of longstanding, then the senior vice-presidency would be the

A. (cont'd.) designation for the position.

But the Aluminum Corporation of America, Dr. Dinman and his predecessor Dr. Coldwell, are at the level of corporate vice-presidents for health.

Let me see...when you look at the seven big chemical companies, the five big ferrous metal...seven or eight nonferrous...the automobile industry...petrochemical industry, there ain't no such animal.

So anyway, here is the senior V-P reporting to the chairman of the board. Now, as it exists virtually everywhere, the health, safety and environment program is in itself unique. If you look at the organizational structure, you will see why it is unique.

Reporting to me was first the area of industrial hygiene, second was the area of corporate engineering..corporate environmental engineering...next would be the area of safety. Also reporting to this position would be the area of regulatory law. Also reporting would be toxicology. Also reporting would be biostatistics and epidemiology. Also reporting would be product safety and technology. Also reporting would be the medical library and learning resource, and also reporting would be...it's up here, but it doesn't belong...would be employee education, management and employee education.

So in essence what you had was the totality of the flow through health, safety and environment focussed in one responsibility - industrial hygiene was in-plant industrial hygiene measurements, monitoring surveillance, sort of the OSHA office.

Corporate engineering was concerned with industrial effluence, plant design, the controls to provide a level acceptable to the industrial hygiene, so this would be EPA, in our context.

Safety would be...

DR. DUPRE: That word, again, that you wrote down below corporate is what, again?

THE WITNESS: Corporate? Environmental engineering.

DR. DUPRE: Oh, okay. Yes. Thank you.

THE WITNESS: Environmental engineering.

Safety would be just that - safety.

Regulatory law would be the person responsible for monitoring the Federal Register, having the responsibility for preparing responses to proposed rules, the person responsible for submitting to the regulatory agencies any information that would be requested, demanded or volunteered.

Toxicology is the traditional definition of toxicology.

Biometry and epidemiology are in the very best traditions of any campus, either medical school or liberal arts.

Product safety would be related to three things. First, there would be the recipient of all customer or general inquiries relative to the products themselves, it would be the office through which all efforts or all actions aimed at modifying a product, a new product, changing of the formula, changing of a work practice, we would have to, if we are going to substitute A for B because maybe A costs six cents a pound instead of sixteen cents a pound...none of this could be done without approval from HS and E.

And then the medical library and learning resource was just that, a complex library that is archival as well as one that contains journals. It has a direct tie-in with the National Library of Medicine, both the med line and the cancer line.

Then the communications, or whatever you want to call it, and this was the preparation of employee brochures, the preparation of documents for circularization to...relating

5 THE WITNESS: (cont'd.) to health, safety and environment for circularization to customers, and in general anything that had to do with putting in a communicatory sense the things relating to health, safety and environment.

So that we had here the, really, the totality of the program under the...since all of this derives from health considerations...under the direction of a physician...oh, obviously I left out the corporate medical director.

10 The reason I left that out is when I first came to the company, I had both jobs, so I never quite thought of it as a separate thing.

15 But the corporate medical director, also reported directly, and of course when one thinks of the corporate medical director, one automatically thinks of one other position, and that is the manager of health programs.

20 The manager of health programs is a position that was first created by my coming. It is a person...well, let me tell you who the person is, it is Mrs. Helen Young, who is a registered nurse with a graduate degree, and then also with a Master in Business Administration.

Now, she actually manages the programs themselves.

25 What are the programs she manages? The sputum cytology program, the x-ray program, the medical records program, the hearing conservation program, the pulmonary function program, and it is her responsibility that these programs are not only managed in terms of their operational sense, but it is she who has responsibility for making sure that we have appropriately-trained and licensed or certified hearing conservation technologists, pulmonary function technologists, the maintenance of records, maintenance of...the assurance of the proper flow pattern for the reading of x-ray films and so on.

30 So that with the corporate medical director and

5 THE WITNESS: (cont'd.) the manager of health programs, there really is no element relating specifically to health, safety and environment that isn't part of co-ordinated program.

10 Now, the point I wanted to make is, much of this existed before I came...some did not. For instance, a condition for my coming to work was that I was going to set up the equivalent of an academic department in biometry and epidemiology with the statistical clerks, the computer people, the nosologists and so on, all of which were words which most of the management had never heard before, and we set one up under the direction now Dr. Chase, who I think has appeared before this group here, a Ph.D., in biostatistics.

15 So this would be a new add-on. This would...the manager of health programs was an add-on only in the sense of the formulation of a responsibility, but the activities were there long before I came, as was industrial hygiene, as was an employee education unit, as was environmental engineering, as was safety.

20 Regulatory law was there, and again it was primarily based in the legal department, but it became very, very apparent that since we in HS and E were living and breathing each day the world of standard setting regulations...

25 So that was our setup. It was an omnibus approach at a level consistent with sufficient authority to make anything in which the person who occupied this position really wanted to dig his heels in, it would be.

MR. LASKIN: Q. What is the professional complement of the department?

30 THE WITNESS: A. Oh, well, you are aware that while I still devote some time to Johns-Manville, or Manville, I retired last year in August, and the company shares with the

A. (cont'd.) rest of the world in the thorns...I was going to say the fruits of recession...so the corporation has downsized - I guess that's the technical term.

To my knowledge, nobody has been let go from HS and E, so I would say sixty people, and I could be wrong by fifteen, twenty percent, but not more than that.

Q. On the regulatory law side, you mentioned that you've got somebody specifically monitoring the Federal Register and federal standards and so on, and I suppose looking at it from our point of view, is there someone reporting or was there someone reporting to you who was monitoring non-U.S. regulatory provisions?

A. I should have said regulatory with the provincialism. Sure, it's not only federal, but state, but wherever the corporation was involved in activities.

Q. For example, who would be reporting to you that was monitoring the Ontario regulatory framework?

A. By name, it would have been Mr. Richard Carter, an attorney who has left the corporation. But Dick Carter would be the one who had the responsibility for making sure that the company was aware of what the legislative and regulatory environment that it was operating in was at the time, independent of geography.

Q. Was he an Ontario-based solicitor?

A. No, no. He was a Denver-based attorney.

Q. But he had responsibility for monitoring non-U.S. jurisdiction?

A. To the extent that I did as well, yes. It isn't as though there weren't a local responsibility as well. There is in every place. But in terms of the headquarters, as it were, that's where they were, in Denver.

DR. DUPRE: Just a couple of questions about that

5 DR. DUPRE: (cont'd.) chart that you've sketched there, Dr. Kotin. Do I take it that the corporate medical director, or the office of corporate medical director, is on the same level as all of the other boxes you've got there - the industrial hygiene, environmental engineering, etc., etc.?

THE WITNESS: No, no. Not at all. Basically, the corporate medical director reported to me.

10 Now, the statistics, biostatistics and epidemiology reported to the corporate medical director. The manager of health programs reported to the corporate medical director. The physicians reported to the corporate medical director. Industrial hygiene reported to the chief environmental scientist, as did environment engineering.

15 Safety reported to the chief environmental scientist.

MR. LASKIN: Q. There should be some other...if one is going to be absolutely one hundred percent accurate about the reporting line, then you've got to draw some other boxes in there?

20 THE WITNESS: A. No, I've got to change the levels of the boxes. In other words, again I didn't realize you were going to be following that precisely.

So here, if this is the senior V-P, I didn't have all these people reporting to me, but the medical director reported to me, the chief environmental scientist...

25 Q. The medical director was Dr. Paul?

A. Dr. Paul, until the first of June.

Q. And the chief environmental scientist was Dr. Raitze?

30 A. Dr....Mr. Raitze, exactly. And see, he would have had industrial...well, anyway, let me...so who else has to go down the list...environmental scientist, who else reported to...

A. (cont'd.) ...oh, the product safety and technology would have reported to me.

5 Q. Who is the fourth one, I'm sorry?

A. Legal.

Q. Legal. And then the other boxes that you drew, they are reporting to...

10 A. Oh, the chief environmental scientist, Mr. Starr, the industrial hygiene, would report to him...Mr. Burford would report to him, the chief engineer.

Mr. Noyes, safety, would report to him, so that there is a hierarchy. But only four people reported to me.

Q. Just by way of comparison, pre your position who would the corporate medical director have reported to?

15 A. To where they report in ninety percent of all corporations - to employee relations, because corporate medicine would be part of the employee relations spectrum of responsibility.

20 Q. The use of the term 'director' in corporate medical director, I take it, does not signify that that person is a director of the company?

A. No. Nobody on that is...no, not a member of the board of directors. It is just a level.

Q. A level.

25 DR. DUPRE: Just so I can flesh out the chart in my own mind, Dr. Kotin, I've got the four positions that reported directly to you clearly in front of me, and then I believe you said that the industrial hygiene, the environmental engineering and the safety reported to the chief environmental scientist?

30 THE WITNESS: That's correct. Safety, industrial hygiene and environmental (sic) science reported to the chief environmental scientist.

DR. DUPRE: And now as far as the corporate medical director was concerned, the manager of health programs reported...

5 THE WITNESS: Right, and biostatistics and epidemiology.

DR. DUPRE: Biostatistics and epidemiology.

THE WITNESS: And those were the two that reported to the medical director.

DR. DUPRE: Not the medical library?

10 THE WITNESS: The medical library reported to the information area. Basically that was an area of information.

DR. DUPRE: So at this point the regulatory law, of course, just is your legal box, isn't it?

THE WITNESS: Yes. It reported to me.

DR. DUPRE: Oh, it reported...yes, right.

15 THE WITNESS: Directly to me.

DR. DUPRE: And toxicology would have been the corporate medical director?

THE WITNESS: No. Toxicology reported to product safety, evaluation and so on, because the purpose of toxicology was product safety, product monitoring and so on.

20 DR. DUPRE: Okay. Thank you. I think that rounds out my understanding of the chart.

MR. LASKIN: Q. As far as you were concerned, Dr. Kotin, I take it from looking at the pre-1980 and post-1980 organization chart of the company that you, after 1980, reported directly to the chairman of the board, whereas pre-1980, you reported to the vice-chairman of the board?

25 THE WITNESS: A. Correct.

DR. DUPRE: May I ask, was your position the only one that reported to the vice-chairman of the board?

30 THE WITNESS: Yes, and this was deliberate in the sense that it was the vice-chairman of the board who had the actual

5 THE WITNESS: (cont'd.) job of recruiting for the position. It was he that I discussed my coming to Johns-Manville with, before I did come, with Mr. May, who has since retired, and since he was responsible for overall administration of the corporation in addition to being vice-chairman of the board, it was a handy relationship.

10 MR. LASKIN: Q. And just one further question along that line. There are a number of senior vice-presidents, clearly, who report to the president, and then there are others who report now to the chairman of the board.

What was the rationale for your position reporting to the chairman of the board as opposed to the president?

15 THE WITNESS: A. Because...oh, God, I can give you my rationale. I don't know if that would...basically the interests and the responsibilities of the health, safety and environment program were so total in terms of its responsibility for impact on the corporation, the only way you could be sure that anything that would either be promulgated or stated or written that would have total application to the corporation
20 would be on a chairman's letterhead - the chairman of the board would be the one who would issue whatever it is that would be issued in the way of communications, at a corporatewide application.

25 Q. What I would like to now, if I can, is try to get some sense of the flow of information through your department, and the decision making that rested in your department, and can I try to do that by putting some specific examples to you, and then you might just tell me how your department, and how you and people under you, deal with particular situations.

A. Sure.

30 Q. Let's take this situation, and let's bring it to Ontario: Let's assume in Ontario there is a facility that is operating in Ontario, one of your facilities, whatever

5 Q. (cont'd.) it is, and it's showing dust readings which are considerably in excess of the prevailing regulatory guideline or standard, with some considerable frequency.

I suppose to put a concrete example, at least our information is that may have happened at the Reeves Mine in the mid-1970's.

A. Early-1970's.

10 Q. Early-1970's. Okay.

How would you find out about that, and can you tell me what input you would have into anything that was done about it?

15 A. First, the discovery would be on the basis of the fact that the central repository, in addition to the local repository, of all industrial hygiene information is in the office of the person responsible for industrial hygiene, who reports to the chief environmental scientist.

Any abnormalities are immediately a matter of knowledge within the group.

20 Let me tell you how I ran the shop, and maybe this will be very germane.

Q. All right.

25 A. Whether I was a dean or a provost or a head of a department, I always have had a morning staff meeting of everybody, and that is from the person immediately reporting to me, to members of the secretarial staff, to that extent that would want to come. We would meet every morning, and this was a meeting that had as its...and which incidentally is still being continued...that has at its purpose information exchange.

30 No decisions were made, no subjects were explored in depth. Those were at different meetings.

The unspoken preamble for everybody around the

5 A. (cont'd.) table - all thirty - was since we met yesterday morning, this has happened that I think you all ought to know about, and the only questions that would be asked would be those for further explanation and elaboration - not for probing in depth.

10 So indeed, yesterday we got our reports on industrial hygiene from plant X, plant Y, from a mine in southern Ontario, and the readings are high.

15 Q. Whose reports would those be, by the way? Would they be your internal company...?

A. The chief environmental scientist would tell us that.

20 Q. All right. And would he be relying on information and inspections done by your own industrial hygienist?

25 A. By his people, exactly. Or maybe people from a government agency as well. There is no structure to it. It was just information.

30 Q. That's what I wanted to know. I mean, would the government inspection reports get funnelled up through?

A. Absolutely.

35 Then as a result of this report, first of all is it right in terms of the numbers right, industrial hygiene and so on....what is being done about it, why is it, how did it compare with the last one or the one before that.

40 Then they had the responsibility for discussion with those responsible for production, the actual...if it was a mill, the manager products, production manager; a plant manager; the local industrial hygienist...the appropriate people in the plant.

45 That bit of information, then, would be an item for a probing in depth at different meetings that we had, our weekly staff meeting, our monthly staff meeting, our quarterly

A. (cont'd.) staff meeting. Each had different areas that they addressed.

5 The quarterly staff meeting would probe in depth a given area. It would be a meeting that would begin with breakfast, we would meet all morning, lunch, you would meet all afternoon. It would be a full day.

10 The morning eight o'clock meetings could last as short as five seconds, Bill, if nobody had anything to say? Or sometimes a half hour, at which time I would be getting a little antsy. Sometimes they would go an hour if that much had happened in the last twenty-four hours.

Q. All right. You have identified the problem.

15 A. All right. We have identified the problem, and then we would get a presentation from our people as to what constituted the production peoples' feeling of the situation, and a series of recommendations would be made...all of this coming over a long period of time, but this is telescoped.

Recommendations would be made and efforts would be made to make sure that the recommendations were acted upon.

20 Q. All right. I take it one of the recommendations that might be made would be a recommendation to improve the equipment?

A. One extreme - shut it down, at the other, or anything in between. Yes.

25 Q. What kind of decision-making power rested in your position and in your department with respect to taking one extreme - shutting down the plant, or taking another extreme - making a capital expenditure?

30 A. The decision making was obviously at the level of a senior vice-president, of which I was one, so...the ultimate decision would be, again, it would be made there. I can't give you a different answer because I felt differently about

5 A. (cont'd.) different issues. Some I would dig my heels in and put my job on the line, and others, gee, it would be nice if my recommendation could be - from the point of view of elegance or nicety - could be accomplished, but it varied how important it was, but a decision would come from me if this is the point. I would make the decision that we would be doing X at plant Y, and then my decision, if it were promulgated as a decision, would have the force of the vice-chairman of the board or chairman of the board decision.

10 Q. Was the decision to close a plant a decision that you could make, if you wanted to?

15 A. I wouldn't close the plant, but a decision I could make would close a plant if I said yes, we will close it.

I guess the best example would be some activities that we had where...not in the field of asbestos...where it just seemed the right thing to do, to close a plant.

20 Could I shut down a plant if I went to the chairman of the board and said, John, we've got to do this in forty-eight hours or shut it down? I can't honestly think of a specific forty-eight hour denotation, but yes, Reeves is a good example. I would say that my input into the shutting down of the Reeves Mine was very substantive.

25 Q. Well, can you help us, can you just elaborate on that? I just want to make sure I understand what role your department played.

A. First of all, it provided the information for action....the industrial hygiene measurements, the assessment of environmental engineering, etc., etc.

Q. Okay.

30 A. And then the information is reviewed, I guess, with the appropriate senior vice-president and decisions were made.

A. (cont'd.) So to say that I alone made the decision I think would be gilding it a little.

Alternatively, where I felt that this was a proper step to take, the step would be taken.

DR. UFFEN: Could I just ask...a major decision like closing an operation, closing down a mine, wouldn't that have gone to the board of directors as a recommendation, or would that be done as an operational decision?

THE WITNESS: It would depend. The closing of a mine for health, safety and environment would not be a board of directors decision. It would be mine. I guess to close it whether it was showing six percent return on assets rather than two or three percent, the board might be involved in that. But the board, really all they know about health, safety and environment is that they can use the words and spell them, I guess.

DR. UFFEN: Could I take an example not quite so extreme, but still using the Reeves Mine?

THE WITNESS: Yes.

DR. UFFEN: Could I suggest for a moment that if you discovered that there was a health problem, an alternative to closing it down might be to change some mining and milling processes, new equipment and so on, which might be very, very expensive. So you have a problem.

Now, the senior vice-president, mining, in the old organization, surely he would have had an input of what would it cost to take alternative action and so on, and then a decision made as to whether it could be effective or whether you should close it down?

THE WITNESS: This was done at the senior vice-presidents meeting that I alluded to before.

DR. UFFEN: Now, a senior vice-presidents meeting, could you just elaborate a little bit on how it would...how it

5 DR. UFFEN: (cont'd.) did work? Was it an ad hoc meeting or a regular meeting of the senior vice-presidents dealing with an agenda?

10 THE WITNESS: It was a regular meeting in terms of the issues that came before it. It wasn't a regular meeting in terms of calendars - it wasn't the first Monday of every month. Sometimes we would meet three times in a month, sometimes twice or three times in a week - literally, sometimes two or three weeks would go by.

15 But at this senior vice-presidents meeting, there would be the persons with the ultimate responsibility for every operational and every staff function for the corporation, so the status would be the senior vice-president for health, safety, finance, public affairs and there would be legal...but production would be the senior vice-president for mining, senior vice-president for filtrations and minerals, for wood products, for the others.

20 And there the recommendations and actions would be taken which obviously would have the force of policy only to the extent that the chairman of the board would have to promulgate it, but when the senior vice-presidents group arrived at a consensus, by and large this was policy of the corporation and this didn't relate to health, safety and environment, but it related to moving along the product lines or proposed divestiture or proposed acquisition.

25 Let me give you an example. During the course of the time I was at the company, the corporation looked in three areas for proposed new areas of activity, and I guess they were in the paper so we can mention...I can mention at one time they thought they might be interested in the cement business. Another time they thought they might be interested in the coal business.

30

5 A. (cont'd.) Well, I would like to think that fifty-one percent of the decision not to go into some of these areas as on the basis of health, safety and environment....this is what you are buying in terms of potential commitment of resources and problems and so on.

10 So this would be an example of where the decision not to acquire a coal company would not be mine, but basically would be, in a large measure, shaped by my input.

15 In other areas, health, safety and environment have no input at all - where they would discuss marketing techniques or what have you.

20 So that's why I can't give you a yes or no. It varied with the subject at hand. But the senior vice-presidents would address an issue, and let's use Reeves as a good example. It would have to take the vice-president for mining, it would have to involve those responsible for what was then called the asbestos fiber division, it would involve the senior vice-president with international responsibilities and so on.

25 So you've got four areas that would have some input into what the situation was, and the one common meeting place for these four areas to be discussed and aired would be the senior vice-presidents meeting.

MR. LASKIN: Q. And is that where the decision would ultimately be made, at one of those meetings?

25 THE WITNESS: A. Who would make decisions? Yes, ultimately it's the chairman of the board's decision.

Q. Fair enough.

To take something far less drastic, I mean let's talk about capital improvements to equipment in the plant and so on.

A. HS and E there would have...

30 Q. For health reasons.

A. I beg your pardon? For health reasons...would

5 A. (cont'd.) be part of the signoff on it, if you would look at these forms which involve capital improvement, or even forms that involve product reformulation or whatever. There is an HS and E box, as there is the appropriate senior vice-president for production and so on, and unless there was a PK in that corner, it didn't go.

Q. It didn't go.

10 So for example yesterday we had in evidence before us, and I can get you the documents if you want, the list of capital appropriations made for the Johns-Manville Scarborough plant over time, - at least from 1960 forward. What input did you have in those appropriations, at least from the time you were there?

15 A. Well, the input would be that relating to, if it were to be an environmental engineering expense, on the basis of what the environment engineers would say what we propose to do will be adequate or inadequate to meet the problem. That kind of input. Not whether the cost, what the price was, we wouldn't have any input as to what the cost would be, costs and so on. Stack recoverings, water effluent units...

20 Q. If it related to a health matter, regardless of the cost, it requires a PK in the corner? Did it require your approval before that capital expenditure could be made?

25 A. Yes. Again, let me say, it wouldn't get a PK, it would probably get a William Raitze on it, or a Dave Burford and so on. Yes, it would go through HS and E.

Q. All right.

30 DR. DUPRE: I wonder if I can just try to flesh this out a little bit more by getting us into the organization chart that I believe that you have, the pre-1980 and the 1982. Do you have one?

MR. LASKIN: Yes, Dr. Kotin has that in front of him.

THE WITNESS: I have it right in front of me, yes.

DR. DUPRE: Great. Let's look at pre-1980, because
5 this is going to be material, I think, to much of the evidence
that we have taken in terms of the Scarborough operation.

Now, as I understand it, of course, the Scarborough
plant was under a plant manager who in turn reported to a
product manager, who I believe in turn reported to the division
general manager, would would be CPD here...that individual having
10 the position of division general manager within the larger
corporation and within Canada, the title of president and chief
executive officer of Johns-Manville Canada Incorporated.

THE WITNESS: I see that.

DR. DUPRE: I understand that that is roughly the
situation in terms of how the CPD box is organized, and basically
15 at the first level you have that CPD box is that division general
manager or president. Below him is a vice-president, production
or a production manager. Below that individual are the several
plants and several plant managers.

Now, as I understand it at this point, with
20 respect to industrial hygiene in a plant like the Scarborough
plant, there would be industrial hygienists who would come to
that plant from time to time, take measurements and so on, but
these industrial hygienists would not be members of CPD, they
would instead, as I understand it, but now I'm asking it as a
question, would they be in the industrial hygiene division that
25 reports through the chief environmental scientist to you?

THE WITNESS: Yes, sir.

DR. DUPRE: Okay.

Now, as I understand it at this point, the
industrial hygienists would come to the plant from time to time,
they would take measurements, they would forward reports to
30 Denver, and at this point, I presume, forward the reports to your

DR. DUPRE: (cont'd.) industrial hygiene division, correct?

5 THE WITNESS: Mr. Swallow.

DR. DUPRE: Okay.

Now, again as I understand it, these industrial hygienists would have so-called exit interviews at the time they would leave a local plant like the Scarborough plant. You are familiar with that practice?

10 THE WITNESS: Yes.

DR. DUPRE: And would I understand correctly that from your standpoint, or from the standpoint of the corporation, a purpose of the exit interview was to give immediate information to local management, to the extent that such information might be useful to local management with respect to certain things that could be accomplished locally, virtually on the spot or relatively quickly?

15 THE WITNESS: Yes, sir. And again, I guess, there was an ongoing dialogue all the time the industrial hygienist crew was there.

20 DR. DUPRE: Okay. I just want to continue to follow this story through, because your confirmation or otherwise, and any corrections you want to make, I consider quite important.

Now, as I would understand it at this juncture, and now I'm joining some of the points you made early this morning, what wound up being reported to the industrial hygiene division, say it was in terms of unusual readings in a particular plant, that is the sort of thing that could wind up being shared at one of your morning meetings?

25 THE WITNESS: Yes.

DR. DUPRE: Okay.

30 Now, at this juncture can I ask you the following: It is my understanding here on the basis of the testimony that

5 DR. DUPRE: (cont'd.) we've had here the last couple of days, that down at the grass roots where the production operations are going on, plant managers have a certain limited discretionary authority to authorize capital expenditures of small amounts.

THE WITNESS: That is my understanding.

10 DR. DUPRE: I also understand at this point that there is similar discretionary authority, but involving somewhat larger amounts, as you rise right to the top of the CPD box, which is the division general manager. Is that your understanding?

THE WITNESS: That's my understanding.

DR. DUPRE: As well? Okay.

15 Now, could I take it, Dr. Kotin, that in any of a number of its...let us say an industrial hygienist as a result of his work in the plant, his visit to the plant, at the exit interview commented to the plant manager that the adoption of a certain work practice or a certain minor kind of change in his operations that might involve a small amount of expenditure, that that industrial hygienist's exit interview could well yield
20 a situation where the plant manager would simply use his own discretion to go ahead and make the change?

THE WITNESS: It could happen. Yes.

25 DR. DUPRE: Would you know whether an industrial hygienist would have reported to your division that he made a particular recommendation to a plant manager in his exit interview, that involved minor changes?

THE WITNESS: On a given, specific issue, almost certainly not.

DR. DUPRE: Okay.

30 THE WITNESS: I mean, this would not, as unphysical as it is, filter up.

5 DR. DUPRE: Okay. Good. So I can take it at this point that there would be any of a number of relatively minor matters having to do with proper work practices and the proper organization of a plant for safety and health purposes, that might well be regulated on the spot around the time of the exit interview, between the industrial hygienist and the plant manager?

THE WITNESS: Yes, sir.

10 DR. DUPRE: Good.

Now, at this juncture let me try to escalate things a little bit in terms of the following: Let's assume that as a result of some readings by an industrial hygienist it does become apparent that some rather substantial capital expenditure would have to be undertaken to bring the readings down to the level that is deemed necessary.

15 Would I take it that the industrial hygienist would have fed this recommendation up through industrial hygiene into your shop?

THE WITNESS: The environmental officer.

DR. DUPRE: To the chief environmental scientist.

20 Now, in this kind of situation, you know, the whole question of the costing of the particular capital expenditure comes into play. Who does that?

25 THE WITNESS: Corporate engineering and environmental engineering. Corporate engineering from the point of view of the actual engineering aspects where the benchmarks or the rubrics would be engineering feasibility, impact on product, all the things that go with the...and environmental engineering from the point of view of its adequacy to provide the necessary solution to the problem.

30 DR. DUPRE: So now at this point, environmental engineering, which of course is under you...

THE WITNESS: But originally was under corporate engineering.

5 DR. DUPRE: Okay. Has its input in terms of whether the kind of capital expenditure that is being envisaged will indeed be successful in bringing the reading down?

THE WITNESS: Let me give you a specific example unrelated to asbestos - noise, hearing conservation.

10 Corporate engineering, that really is involved with the baffling and the sound. Environmental engineering, and in this case this is what comes to mind, was the ultimate arbiter as to what would be appropriate to see whether it provided the necessary defence against noise.

The same thing would apply in a less crisp way to other problems, to other areas which had more ramifications.

15 DR. DUPRE: Now, in terms of all the various senior vice-presidential boxes on the pre-1980 chart, where would corporate engineering...

THE WITNESS: It would report to senior vice-president for engineering, I guess.

20 What was Charlie Tobias's title? Senior vice-president for operations and engineering, or something like that.

Let me look at the post-1980.

25 The senior vice-president, product technology. There he is, right there. There he is, product technology, because that would deal with the technology of producing material.

DR. DUPRE: With the technology of producing the material.

30 THE WITNESS: Right.

DR. DUPRE: Okay.

Now, at this juncture, through the corporate engineering side which involves the product technology side of the operation, you have the engineering and technological input that enables you to determine the feasibility and cost of the improvement, correct?

THE WITNESS: Yes.

5 DR. DUPRE: While meantime, out of environmental engineering, you have a professional judgement as to the effectiveness of the proposed capital expenditure in terms of bringing an exposure level down?

THE WITNESS: Correct.

10 DR. DUPRE: Now, at this juncture, what we are looking at is a situation where you have established the cost, you have established the feasibility, you have established the effectiveness, and so at this juncture let us say it's two hundred thousand dollars, it is generally agreed as between HS and E and product technology, as between environmental engineering and corporate engineering, that this will basically do the job.

15 Now, at this juncture, what we have left is the approval of that capital expenditure from a financial standpoint. Would this be where the senior V-P finance comes in?

THE WITNESS: Yes. Not in the sense, I guess, of making a decision, but seeing whether it's a feasible expenditure, I guess.

20 Really, maybe I should have paid much more attention to those things which are not immediately germane to HS and E when they were being discussed...the senior vice-president finance would always be at the senior vice-presidents meetings, of course, but by and large the expenditure, capital expenditure, would be the penultimate responsibility of the senior vice-
25 president for whichever area it was - in this case let's say product engineering or product technology. The ultimate decision being that of the chairman of the board again.

30 So I'm sure the input of Mr. Bartolango, because he is vice-president of finance, would be the technical aspect of financing this, rather than the other substantive aspects of the actual capital expenditure itself. And I guess his input,

5 THE WITNESS: (cont'd.) if they were going to build a new plant, would be very, very, very great. If it were to be a hundred thousand or a two hundred thousand dollar modification of some engineering as a result of capital expenditure, he would probably have less or maybe even none. It might have been incorporated into a budget as approved, by the board of directors, of course, as the ultimate approvers of the annual budget for the corporation.

10 The meetings of the senior vice-presidents had...it was a small group, I guess an informality is not the right word. It had a give and take. It really wasn't a parliamentary procedure that we dealt with.

15 DR. UFFEN: Perhaps a little supplementary while I think of it here, it's about the role that you and your colleagues would play in the budget-making process. I'll explain what I have in mind.

20 You might normally anticipate that a year from now we are going to have to do some major changes on ventilating equipment or something like that, and there's time to budget for it.

Another possibility is, something breaking down and you have an emergency expenditure that wasn't in the budget.

I'm interested...do you play a role in preparing forthcoming budgets, advising that the budget for so and so had better include provisions for such and such?

25 THE WITNESS: Not preparing, but reacting to, because all of those budgets were approved at senior vice-presidents meetings.

30 In other words, I would get, every spring, proposed plans for each unit...a proposed budget for each unit of the organization, as every senior vice-president would get, for the whole corporation. I would read them all myself? Certainly

THE WITNESS: (cont'd.) not. Bill Raitze, this is yours...Bill Paul, check this over for your domain...Burford, check it over for your domain.

So we would be greeted with a prepared budget, but not an approved budget and not an inviolate budget. But we had the opportunity for input...gee, down the line isn't plant X going to require this in the way of stack effluent capture unit or a scrubber...we don't deal in scrubbers here...or effluence of that kind...but yes, we would have that input and the very thing you mentioned has happened several times in the course of the operations. They get to become very, very specific, and we at one time were in the talc business. We are not in the talc business because of HS and E, but I can recall then making a point of a certain engineering control, etc., etc., that were absolutely necessary.

It wasn't that I prepared the budget for filtration mining, as the talc business would have been, but it was my review and Raitze's review that said, gee, Paul, they are never going to be able to do what we think needs to be done unless this is done, and so on and so forth. Then that would be what I would carry to the senior vice-presidents meeting.

DR. UFFEN: The one I have in mind is a forthcoming change in asbestos regulatory standards in some jurisdictions, which have been proposed - not yet implemented, but may be implemented - and your regulatory law department and all your other people have been watching this. Would you be asked to suggest 'what are we going to have to do to meet these new regulations if they come into effect'?

THE WITNESS: I can give you a very specific, nontheoretical situation.

In October, 1975, the Occupational Safety and Health Administration proposed a rule to reduce the standard

THE WITNESS: (cont'd.) for asbestos exposure from a time-weighted average of two fibers per cc to a half fiber per cc.

5 Anyway, our response, and it was multi-faceted, one facet of which was this: Bill, let us assume that the hearings are over and a half fiber per cc is published in the Federal Register, where do we stand in our ability to comply? And an inventory is made.

10 And being not foolish, let us assume...at our own peril we would assume that it's not going to be a half fiber... let's assume it's going to come. What do we do?

15 There was a specific example of where we reacted, and did and what we did is measured in the records themselves. I think I testified before this committee already that the two fiber cc standard notwithstanding, what, were seventy to eighty percent of our measurements are below one, and sixty to seventy percent are at a half or less, or something like that - I don't have the figures right at hand, but I know I reported them at the time of my testimony last time.

20 Well, regardless of how I feel about two fibers per cc, my responsibility dictated that the half fiber per cc had to be the standard under which I was marching, and more...

25 DR. UFFEN: Let me pose you two cases here. What would you do in a foreign - that is non-U.S. jurisdiction - if the proposed standard was less stringent than those in the United States, and what would you do if the proposed standards were more stringent than in the United States?

THE WITNESS: The second one is much easier to answer. We can comply or I assume we can be put out of business, or we would essentially have sufficient brief to...

30 DR. UFFEN: But you would make an input of the requirements?

THE WITNESS: I was senior vice-president for health, safety and environment for the Johns-Manville Corporation,

THE WITNESS: (cont'd.) and that is the seven seas and the five continents.

5 DR. UFFEN: Now, before I forget it, the other speculation, if the standards were...the U.S. standard was more stringent than the local standard?

10 THE WITNESS: The corporate standard was...the worldwide corporate standard was two fibers per cc, so that our target was operative in Manville, or Wakegan or Long Beach, it was operative all over the world.

15 Now, if you were to ask me, did in fact this pertain around the world, unless I reform, the answer would of course be no, because basically the authority we have, that I had, in relation to the federal government of the U.S. is not uniform around the world.

20 We have instances where our industrial hygienists have been harrassed by local government, in terms of the threat these things represented.

25 So industrial hygiene is no different than any other element in the deportment or behaviour of a government in any one of the continents around the world.

30 But the policy which, the specific question you ask, is that yes, the corporate standard as it was in the U.S.A. was the target for the corporate standard worldwide. We did not have a set of variable standards as our operational directives.

35 DR. UFFEN: But as the chairman said a little while ago, we are trying to fit together the organization chart as it seemed from your point of view, and the one that has been presented in the last little while, that starts at plant level, one specific plant, a long way from Denver.

40 Is my understanding correct here that if the industrial hygienist visited the plant, the local plant...say it's one in Ontario, which would interest us...makes a

5 DR. UFFEN: (cont'd.) recommendation about what should be done, tells the local manager in his exit interview something about it, but then the process of assessment and decision making goes on at a level two to three levels up in the echelon above that of the local plant manager, and he would find out later, by some corporation standard procedure, what the decision was with respect to his plant?

10 THE WITNESS: We would make our reports to the plant manager and the hierarchy above. The plant manager would get his report by virtue of his responsibility as plant manager.

DR. UFFEN: Directly from your group, or down through the other side of the house? Down through the operational vice-president?

15 THE WITNESS: I would suspect by both, but I can't give you a hard and fast answer because I'm not sure, and I would doubt that it would be any one way or the other one, probably both ways.

20 DR. UFFEN: And if the requirement was a budgetary expenditure above and beyond the normal budget for his plant, the funding would be provided and added in some way to his normal operating budget?

THE WITNESS: That would be our recommendation.

DR. UFFEN: To whom?

25 THE WITNESS: By me to the appropriate senior vice-president, to our engineering group, to the corporate engineering group, to the product...from Mr. Raitze's shop to the product manager. It would depend. I don't think there was any one...

30 DR. UFFEN: You say it would be your recommendation. It might not be accepted in the light of other recommendations? Would it be just one of the ingredients?

THE WITNESS: By and large, if it had to do with

THE WITNESS: (cont'd.) compliance, it would be accepted.

5 How well...the implementation of the acceptance was really not our responsibility in the sense of the performance of the implementation, the mechanics of the implementation.

 The results of the implementation would be our responsibility.

10 DR. UFFEN: What role would the senior officer, whatever he is called, play in a foreign jurisdiction such as Canada? At the present time there are two senior officers - the asbestos group and the other nonasbestos.

15 THE WITNESS: In relation to HS and E, they can be at any point on the globe. It makes no difference in terms of what my responsibilities were and my relationship with the senior officer was. If his domain was two miles away or two hundred miles or twenty thousand miles away, he was still part of the corporation as far as I was concerned - treated no differently than the others.

20 DR. DUPRE: May I ask...

 THE WITNESS: We made no geographic distinctions, is the point I'm trying to make.

 DR. DUPRE: Could I just ask in connection with that what the role of the senior vice-president international would have been? Looking, of course, at the pre-1980 organization.

25 THE WITNESS: I dealt with Mr. Merino no differently than I dealt with every other senior vice-president, whether it was Mr. Tobia or Mr. Shipperly, Mr. Harris, a senior Veep, as a senior Veep he had a designated responsibility just as I, as a senior Veep, had a designated responsibility, and that was... there was no difference is what I'm saying.

30 DR. DUPRE: Let me see if I understand something though, at this point. I want to go back to my for instance of

DR. DUPRE: (cont'd.) a significant capital expenditure.

5 If that capital expenditure was judged as proper and indeed recommended by both the senior vice-president HS and E and the senior vice-president of product technology, I would take it that although formally it might be a chairman of the board decision, the decision would be made...

10 THE WITNESS: The reduction...I mean, again, more eloquent than anything I can say is just to look at the trends in the industrial hygiene measurements over the last ten years and it almost tragically mirrors the economic situation. The situation has improved steadily, and the only way that improvement could have been accomplished was the allocation of capital
15 resources or development of operational modality to reduce to what I think is a rather good situation right now.

DR. DUPRE: Well, you know, I take it you have a whole stream of decisions that precisely involve capital expenditures that are meant to get exposure levels down. I'm just interested in understanding the implementation side, and
20 I'm thinking in particular of an offshore plant like the Ontario, Scarborough plant.

From the standpoint of implementation, would that decision flow down from the senior vice-president international down to the division general manager who is the CPD? Is that the way it would go?
25

THE WITNESS: Yes, sir. I believe that's the way it would go.

DR. DUPRE: Okay. And basically, the local people would have, of course, all the way through, while they were making the capital expenditure and otherwise, of course, constant access
30 on a ready basis to any experts that they might need, in your division?

THE WITNESS: That's right. Yes.

5 DR. DUPRE: But in terms of this point of the implementation, that implementation responsibility would be in the chain that goes from senior vice-president international right on down to the division general manager to plant manager?

THE WITNESS: Yes, sir.

10 DR. DUPRE: And then I can take it at this point that at one stage of the game or another the industrial hygienist is going to come back, and if Murphy's Law is plaguing the project in any way, he, of course, will point that out at his plant exit interview. He can also feed that back into your shop, and then of course you can feed right into the senior vice-president international to say please repeal Murphy's Law as far as this
15 particular project is concerned, is that right?

THE WITNESS: Yes. There is a different chemistry operative when you have an interval of time subsequent to a recommendation, and I have shut down operations, embargoed products, eliminated products, in terms of demonstrable inability...and usually inability is technological inability, because no plant
20 manager wants to produce less.

Where the technology doesn't exist or the raw material itself precludes compliance, whether it's with a regulation or a government or an arrogant so-and-so like myself feels has to be the appropriate level of deportment, a variety
25 of things could happen and have happened.

But the actual flow-down as you describe it is precisely it. When I would speak to Mr. Merino, or to the chairman of the board of Canadian Johns-Manville or so, it becomes his responsibility to address what it is that has been pointed out to him.

30 DR. DUPRE: Now, again so that I can understand some of the more drastic situations, if we talk about closure and

5 DR. DUPRE: (cont'd.) we go back to the Reeves Mine situation, now would I understand correctly, on the basis of the organization chart in front of me, which would be pre-1980, that the Reeves Mine basically would have been in the AFD box, the asbestos fiber division box?

THE WITNESS: Asbestos fiber division. Yes, sir.

10 DR. DUPRE: So that would have, indeed, fed back in terms of direct-line responsibility, to the senior vice-president mining?

THE WITNESS: Mr. Vanderbeek, at the time.

DR. DUPRE: And I would also take it that there would have been a manager of the Reeves Mine whose immediate reporting relationship was to the divisional general manager for AFD?

15 THE WITNESS: I guess so. I could be confused, but he would be in that flow pattern. Yes, sir.

DR. DUPRE: Okay. Now at this juncture, presumably, if we want to take the Reeves Mine as a for instance and run it through what I think I am beginning to understand may be the model here, you would have had, among other things, industrial
20 hygienists who would have taken readings at the Reeves Mine?

THE WITNESS: Yes, sir.

DR. DUPRE: Who would have fed these readings back into Denver?

THE WITNESS: Yes.

25 DR. DUPRE: As a result of this information forthcoming, there would have been some kind of an assessment, I would take it, likely involving environmental engineering, but also production engineering, as to the feasibility of some changes in the operation of the mine?

30 THE WITNESS: One would anticipate that would have happened.

DR. DUPRE: Okay. And then presumably there would

5 DR. DUPRE: (cont'd.) be some kind of a costing
of this going on. At this point, you would, however, determine
on health, safety and environmental grounds what your recommendation
was going to be, and if your recommendation in essence winds up
being that there is no way they can run it, or alternatively the
only way they can run it is through an enormous expenditure, at
this point that is weighed into the overall equation which I would
10 imagine would, in terms of getting fed to the chairman of the
board, would have involved in addition to you, the senior vice-
president of mining, the senior vice-president international
over whether, given what has to be done to comply with your
recommendation, they are going to make the additional investment
or close it down.

15 THE WITNESS: Those would be the two extreme
options, yes.

DR. DUPRE: Okay. Thank you very much.

Sorry, counsel.

MR. LASKIN: That's quite all right.

20 MR. LASKIN: Q. Can we try another example which
may not be a specific problem in a particular location, but
maybe a general health policy that may or may not have emanated
out of your department...I mean, I suppose the obvious one that
comes to mind is the no-smoking policy that appeared to emanate
out of the corporation in late-1977, 1978?

25 THE WITNESS: A. Well, 1977...1977.

Q. Now, was that a policy that originated with
you and with your department?

A. I think so.

Q. And...

30 A. Originated...I never originated anything in
my life. It was involved and developed as a corporatewide policy,
yes.

Q. All right. Something originally suggested by you?

A. Yes.

Q. All right. And then did your department, did you in consultation with whatever other expertise in your department you felt necessary, formulate the policy?

A. Well, it went through the same process that I have described before. I can remember one morning at a senior vice-presidents meeting saying that we should develop a corporate policy on smoking in the workplace, and this is my recommendation, with the appropriate backup - records and documents - and this is why, and here is what I think the beneficial impact will be, what I would like to hear is what reasons there might be for not having the chairman of the board enunciate this as a policy.

Q. And did you have input from an employee relations person?

A. Employee relations, industrial relations, yes.

Q. How did...at the senior vice-president level?

A. Yes, well, the vice-president...well, yes, this was all...the minute that it becomes an agenda item at senior Veep meetings, the person to whom the employee relations and the industrial relations person reported to...in the earlier days it would be Mr. May, at present I think they report to Mr. Shipperly... he would bring that to the meeting. He would bring their input. As would Mr. Tappen, vice-president for industrial relations, Mr. Corsey, vice-president for employee relations I'm sure would be polled by Mr. Shipperly saying, gee, Paul brought this up at the meeting and it obviously involves you two people as well... Mike Tappan, on the basis of industrial collective bargaining and Mr. Corsey on the basis of employee relations.

Well, what about it? Should we or shouldn't we? Can we? I don't know what questions he asked. but those are, yes, input from every appropriate constituency within the

A. (cont'd.) corporation should filter up to the senior vice-presidents meeting.

5 Q. Okay. Then how does that policy get communicated out to the local operations of the company? Let's say Ontario?

10 A. It varies two different ways. This was decided... at that time the corporation held division managers meetings, which were held every three or every four months, I can't remember...which would bring from around the world appropriate people. Mr. Schpockler would come from Germany, Mr. Cashman and his predecessor would come from Canada, and it was a two-day meeting, and there was a structured agenda...both informational as well as operational elements.

15 I think the no-smoking program was born at a division general managers meeting, so that everybody who had... there is no way that the dissemination of information would have missed anybody that should know.

20 Q. But do I take it also with a general policy such as that, so with an individual item that we talked about before - the implementation of that policy would be left to the local operations?

25 A. Well, it would have to be to the extent that we are not there. We are sitting in Denver a mile high, while at sea level in Long Beach or Greencove Springs, Florida, several thousand miles away, we weren't.

30 But we assumed an added role there, because it really wasn't within the traditional bag of persons, of a plant manager or his people. So we educated employee relations personnel at each of the plants, we brought in our physicians and Dr. Schwartz, Dr. Paul and Dr. Kotin lost many a night's sleep so that we could have our education program around the clock, in those good old days when we ran three shifts a day and so on, and

5 A. (cont'd.) we assumed responsibility for education, we assumed responsibility for implementation, but we did not assume responsibility for monitoring. We couldn't, we weren't there, so the blowing of a whistle, let's say, on violaters would obviously would have to be the plant manager or his designate's responsibility.

Q. The enforcement of the policy?

A. Exactly.

10 Q. What about another general issue such as the use of respirators? Let me ask you first of all whether there is any corporate policy on the use of respirators?

15 A. Yes, there is. Basically there are certain activities where the level of engineering is incompatible, incapable of meeting certain prescribed standards, and the law then allows you to substitute respirators because of your inability to meet engineering standards.

20 This is by far the rare exception rather than the rule, and it is always understood that the respirators represent an interim solution of the problem pending the development of an engineering solution to the problem.

Q. Is your corporate policy written down anywhere?

A. Sure.

Q. Where?

A. Oh, in manuals, of course, and so on.

25 Q. Is the policy available to our Commission, if we want it?

30 A. I would imagine there are lots of policies. They, again, are on the basis of local implementation, and have I seen a written policy, let's say at the Los Angeles plant? Of course I have. If it would be the same policy that would be at a plant in Manville, I don't know. But the necessity for wearing respirators? Oh, sure.

Q. Okay. But is there an overall corporate policy formulated within your department?

5 A. Yes, where our engineering controls do not provide the adequate measure of compliance, then respirators are the acceptable alternative.

Q. Is it any more specific than that? Can you be more particular as...

10 A. Respirators represent almost the fulcrum upon which the whole issue...and I'm not going to get into it here, you'll have to come to a meeting in August...and that is the identification and allocation of the role of management as distinguished from the role of the employee, in terms of what their responsibilities are, and I have very, very strong feelings about that and happily they are feelings that have seen the
15 light of printed day in a whole array of both scientific as well as other publications and testimonies before congressional committees and so on, because it is different than virtually anything else where you have to have an element, and smoking... it's very perceptive that you have made these questions back to
20 back...smoking and masks, respirators, because they do represent the domain of management's incapability of doing the job alone.

Unlike policy which relates to making sure that there are so many cubic feet of air exchanged every minute, which management has to have the full responsibility for because the air exchanger is its responsibility, it has the personnel
25 to operate them, that's fine. But management does not have...it has been denied, unions have effectively and ineffectively challenged the right of management to tell somebody whether they can smoke or not, and everytime you see a respirator around an employee's neck, dangling rather than over his nose, there's
30 lots of reasons and any of them justifiable by employees who refuse to wear masks under certain conditions, because there

5 A. (cont'd.) is a science and technology...don't let me under...putting on a respirator isn't as simple as putting on a mask. There is a technology associated with that as well, and I think you have to have the responsibility for addressing that technology as well.

10 So it's easy to be glib and oversimplify it, but this is a different thing, smoking and respirator wearing, but they are both very important and legitimate...at times indispensable, I think, from the point of view of impact on morbidity and mortality, health, preventive measures.

Q. But I suppose there are a number of issues assumed in the question of respirators, and I mean, for example, one question is what kind of respirators?

15 A. This is a technology that I can only speak of and that would prove I can read, not think. I am not a technology specialist...I mean a respirator specialist, and I have no intention of becoming one because on that board there are two or three people who are consummate experts in the field.

20 Q. That's what I want to get at. Where is the decision as to the kind of respirator to be used...

A. The environmental scientist.

Q. Mr. Raitze?

A. Yes, and his advisors.

25 Q. Okay, all right. And in making that kind of decision is he formulating a decision that will be prevalent throughout all of your operations? In other words, will the kind of respirator that an Ontario employee wears or has dangling around his neck be a kind that is approved within the office of the chief environmental scientist?

30 A. Yes, but he sets the standards. Whether they are uniform across all of our operations, I can't say.

In the United States, the regulations are very

5 A. (cont'd.) specific - you will use a mine safety appliance number this, respirator, or one that has been certified for nuisance dust but not dusts that are associated with the development of pneumoconiosis or a degenerative...you know, the regulations are quite specific and identify...in many instances the government can^{not} recommend a 3-M mask as opposed to a Mine Safety and Appliance Company mask, but they give you the specifications and site as an example a 3-M mask or MSA mask,
10 or something like that.

Q. Do I put it fairly to suggest that there will be some corporate policy as to the type of respirator, formulated in the office of the chief environmental scientist, and where that type is acceptable in other jurisdictions, it will be used.

15 A. Yes.

Q. And where it isn't acceptable, then the necessary modifications will have to be made?

A. I think that has been the policy, because you must remember that the chief environmental scientist has one thing going for him, and that is he has continuous communications
20 with the plants by virtue of the fact that the industrial hygienists are on a continuous travel...have a continuous travel plan through all the plants. So he is constant...he is in regular rather than constant touch with them.

Now, this is the information that it is reasonable, and this is actually the case, where the plant manager will turn to the industrial hygienist and say...or the industrial hygienist may not even need to be asked by the plant manager...
25 if for this activity mask number six point seven, whatever, is the appropriate one to provide protection, as determined by the Occupational Safety and Health Administration or the Mine
30 Safety and Health Administration.

Q. I suppose another question is, and you alluded

5 Q. (cont'd.) to it earlier, is what kinds of processes will a respirator be mandated in, and is that kind of issue formulated within your department or is that an issue that is left for development in the local operation itself?

10 A. No. HS and E deals with those...if HS and E has the responsibility for compliance, the modality for complying is the second-order issue, whether the compliance is by an exhaust fan, or the compliance is by some form of chemical neutralization, or by mechanical barrier, the principle of compliance is still... the responsibility for compliance at the level of principle and general policy were still HS and E.

15 Q. Including the second-order issues, as you call them?

20 A. Oh, yes. Because basically Mr. Raitze would say this mask that you buy at your corner Handy-Dandy store might be good for certain things, but it's not a respirator. And the distinction between a mask and a respirator is important, and there are varying degrees of effectiveness of respirators in relationship to what it is you are trying to protect against.

25 DR. DUPRE: Let me just try to see if I am following this discussion in terms of, again, our charts.

30 I take it, Dr. Kotin, from the way you have described the respirator situation, that basically it would be environmental engineering that would be expected to be knowledgeable about kinds of respirators that are available, new technology in respirator design, so on and so forth?

THE WITNESS: Yes. And I just used...and since environmental engineering reports to the chief environmental scientist, I like to think of it as that one rung higher, as the chief environmental scientist's responsibility for whichever of his subordinate groups he may choose to provide him with the expertise.

5 DR. DUPRE: Now, can I take it at this point that the chief environmental scientist, who has environmental engineering under him, which is the part of the operation that is on top of respiratory device technology and so on, of course also having the industrial hygiene division under him, over time gets the benefit of all of the knowledge that is acquired by hygienists in terms of what particular kinds of plant operations...because they can't get the readings low enough...may require a respirator, and so on and so forth? Would that be a fair assumption?

10 THE WITNESS: In other words, would the chief environmental scientist be the one to identify that the approach should be through the respirator because engineering is inadequate?

15 Yes, he would be, I think, where it would begin because it would be his measurements that would point up the adequacy or inadequacy, yes.

20 DR. DUPRE: Now, the point that I'm trying to get to is that as you put the kind of information that you can get on the one hand about respirators and respirator technology, on the other hand about the particular plant operations that may require that kind of protection, presumably as you start to put these pieces of information together you can assemble some kind of picture whereby, for example, an asbestos worker who was engaged in a particular maintenance operation should be matched to a particular kind of respirator that can do the job?

25 THE WITNESS: Yes, sir.

DR. DUPRE: Okay. Now, to the extent that that information can be assembled, at this point the next step is, I would imagine, to communicate that back down to the plant?

30 THE WITNESS: Yes, I think we are making it...if I may interrupt...we are making it sound perhaps a little more formidable than it really is.

5 THE WITNESS: (cont'd.) There is no such thing as a plant, that I'm aware of, that has the need for universal respirators. It is only a particular job, and I would judge the need for respirators across the board, in any activity, would be one, two, three, five percent of the...maybe one job out of fifty...so I would like the record to clearly show that respirators are not the prime or even the major activity or mechanism for employee protection.

10 It is the fellow at the one particular area, and as you pointed out, a maintenancæperson where really you wouldn't know how to engineer protection against some breakdown of a piece of machinery where a gasket would blow, or something like that, and I think that's important to emphasize - that respirators really represent the response to the limited, highly-individual
15 situation and is not the rule or the norm.

DR. DUPRE: That's very important, precisely because, of course, it is selective and of course presumably of course, how it has come to be selective is, of course, that over time, down at the other end, you have been using engineering
20 approaches to get general levels of exposure down, but at this point, coming back to my nexus between environmental engineering and industrial hygiene, what you have been doing as you proceed on your learning curve is increasingly to develop the capacity to marry a particular position or it may be a particular position when it is doing, performing an operation only for a limited
25 period of time, of marrying that identified position with, on the other hand, a respirator kind of technology that will do the job?

THE WITNESS: Correct, sir.

DR. DUPRE: So you accomplish this marriage as you proceed along your learning curve, and at this point I would
30 take the following, from what you said, given the selectivity, among other things, that the next very important step would be to

DR. DUPRE: (cont'd.) communicate this marriage down to the plant that's going to be involved.

5 Now, what I'm interested in at this juncture is how that communication would take place. If we go back, say, to the pre-1980 box, and since this is Ontario, look at the Canadian products division, what would happen? Would the communication of the appropriate respirator for the appropriate position come down through the senior vice-president international to the division
10 general manager, and from there to the plant general manager?

THE WITNESS: It could in a specific situation where, using Canada as an example, I would say that Mr. Merino in all probability would have said to Mr. Raitze, Bill, do what you have to do, the best way that it has to be done. And Mr.
15 Raitze might say, well, this has to come as a directive from you.

He might go to the plant itself, he might have the industrial hygienist do it. Alternatively, there have been instances where I have got on an airplane and have gone to a plant and gotten all the employees...actually go to a plant and be there during two change shifts, or shift changes, to see what
20 the employee utilization of masks or respirators was, and I would assume responsibility for delivering the message on the use of respirators in jobs one, seven, fourteen, and thirty-six, out of a fifty-man or a hundred-and-fifty-man work force....or in some instances fewer or lesser, but...so there was no one way. What was determined was the most effective way to get the message
25 down and make sure that the message was acted upon.

DR. DUPRE: There is no one way, but could I take it that there were, shall we say, two families of ways?

THE WITNESS: Yes.

DR. DUPRE: One family of ways would be through
30 the senior vice-president international, to the division general manager, down to the plant manager.

THE WITNESS: Right.

5 DR. DUPRE: The other family of ways would involve personnel who could be as far down the hierarchy in your shop as the industrial hygienist, going all the way up to you, yourself, communicating to a particular plant about the use of respirators...

THE WITNESS: Yes.

10 DR. DUPRE: ...for linking of particular respirators with particular positions?

THE WITNESS: Yes. The dichotomy you describe is exactly what one would conclude. But basically you must remember that there are...the dramatis personae are broad.

15 First of all, you have a plant physician, and he not only practices therapeutic medicine, he practices preventive medicine, so he has an interest in making sure...he is the physician who is on the spot, he has an interest in making sure that just as the blowers are working and hearing protection devices are being used, that the respirators are being used. This is part of his practice of medicine, so you have that.

20 You have the responsibility of the plant manager, as I pointed out. You have the responsibility of HS and E. So that while there are these two parallel paths which are convergent, they involve a lot of people and there is multiple input, is I think the point I am trying to make, whether it comes through the HS and E or the senior vice-president international.

25 DR. DUPRE: Could I just make the following proposition to you, and the question is, does this proposition surprise you.

30 On the basis of what I have heard the last couple of days, I am developing the view that probably the manner in which...the manner through which these questions were worked out most of the time involve the nexus between the industrial hygienist coming to the plant on the one hand, and the employee relations

5 DR. DUPRE: (cont'd.) manager of that plant, who is below the plant manager, on the other? Would this in any way surprise you, or does this dovetail with your general feeling of how things really got done?

THE WITNESS: By and large, the employee relations person on the spot would be the vehicle for the accomplishment of a whole array of things - by virtue of his being there, by virtue of the very title he has of employee relations.

10 So no, you do not surprise me because your nexus is correct.

MR. LASKIN: Shall we give the witness a rest?

DR. DUPRE: Is this perhaps, yes, an appropriate time to give the witness a rest, and we'll resume in about fifteen or twenty minutes. Let's say fifteen.

15 THE INQUIRY RECESSED

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THE INQUIRY RESUMED

DR. DUPRE: Shall we resume?

20 THE WITNESS: Please.

DR. DUPRE: Dr. Kotin, I have just a few questions through which I am seeking to instruct myself again in your decision making in your operation, by referring to our organizational chart.

25 Now, as I take it, under your corporate medical director you have the biostatistics and epidemiology divisions. You have the manager of health programs, basically. Those are the two divisions...

THE WITNESS: Other than the physicians in the plants themselves, but I have treated them as separate.

30 DR. DUPRE: The physicians in the plants themselves.

THE WITNESS: Yes.

5 DR. DUPRE: Let's stop right there. Would those physicians in the plants themselves report to the corporate medical director through the manager of health programs?

THE WITNESS: No, no. The physicians in the plants would have a direct relationship with the corporate medical director.

10 DR. DUPRE: Okay. The plant physicians would have a direct relationship to the corporate medical director.

THE WITNESS: As professionals. I guess administratively the corporate medical director would use the office of health to circularize documents, reprints of medical literature and the like.

15 DR. DUPRE: Okay. Now, in doing his research would the biostatistics and epidemiology division rely heavily upon the medical records of J-M employees from wherever they may be found in the world?

20 THE WITNESS: This was the rationale for setting up a biostatistics program, to take available data, collate it, store it in a way that could be retrieved, and then utilize as any body of data could be utilized, for the asking of questions, the development of these . I don't mean it to sound fancy, but that's exactly what it is. It's what any academic department in biostatistics and epidemiology would do with any data resource at hand.

25 DR. DUPRE: So in that division, they would store medical records, presumably duplicates of medical records, with respect to J-M employees in whatever plants they might be found in the world?

THE WITNESS: Again, let me just make one comment. The magnitude of the task is something that can't be overstated.

30 But yes, that would be the intent, would be to have a central data bank...I guess that's the jargon...that would

THE WITNESS: (cont'd.) be available for use to provide demographic data that was relevant corporation data.

5 DR. DUPRE: Now, so you have that central data bank. Now, would the medical records of any particular plant that corresponded to that plant also continue to be found in that plant?

THE WITNESS: Yes. That would be where the employee relations office would have that data.

10 DR. DUPRE: But meantime, however, presumably, the data bank in the epidemiology division would have the capacity to retrieve records on a plant-by-plant basis?

15 THE WITNESS: Yes. That has been the target and an inordinate amount of resources have been committed. Many of those people in those boxes, I'm sure, both sotto voce in my presence and very loudly in my absence, complained about the fair-haired treatment that biostatistics and epidemiology, favored nation treatment...

20 DR. DUPRE: Now, insofar as the plant-by-plant medical records are left in the employee relations office of the plants which are located in various jurisdictions, is there a company policy with respect to sharing those medical records with government agencies in the jurisdiction in which these medical records are being kept?

25 THE WITNESS: The policy...the medical records all of the policies and actions are derivative from a single principle - and that is, the employee is the master of his own medical records, and he has the right to not only access it himself, but the right to say that the data should made available to...and the only thing we insist on is that it be made available to appropriate and accepted medical personnel.

30 So there is employee total access and employee total referral to his physician, let's say, or health professional.

5 DR. DUPRE: Now, can I take it that pursuant to this policy an employee who wished to have his J-M medical records conveyed either to his private physician or, let us say, to the WCB in his jurisdiction, would, of course, be able to request this and have the request executed at the local plant level?

THE WITNESS: Yes, sir.

10 DR. DUPRE: Let me ask you this: In a situation where you have been building up a central data bank, if by chance records have been misplaced or a record could not be found in the local plant, would your data bank have the capacity to enable someone, relatively simply, to retrieve the record of a particular employee, or to at least search the data bank to see
15 if by chance a duplicate of that record existed?

THE WITNESS: That is the intent. Whether it has been fully achieved by now, I can't say. Will it ultimately be fully achieved? Yes.

That's the rationale for all the hardware and the software that has been committed to this activity.

20 DR. DUPRE: Again with respect to your employee-centered policy on making medical records available, do you have a policy that by affixing sufficient anonymity to medical records enables your records to be used for purposes of epidemiological research?

25 THE WITNESS: That would be again a clear potential use of this information gathering. The populations that are included in the base are in many instances really the only source of information that would be of benefit to the scientific community as a whole, or to the health profession.

30 So surely that is the ultimate intent. There is, I would suspect, one caveat, and that's a caveat that would be related to the element of judgement as to the quality of the

5 THE WITNESS: (cont'd.) person or persons or institutions that are requesting the data. This is no different than it is in any other field of human endeavour, but very specifically in relations of this...we have had requests during my tenure for information relating to populations that might have certain asbestos-related diseases.

Once satisfied on the quality, we work hand in hand with that.

10 I can think of one or two witnesses before this group who, as a result of...and again, here up until now there has always been this - that this ultimate decision at least was mine, and I don't shoulder, I can't shelve the responsibility. I decided and I alone decided who or who would not have access to the data, so that when a group of scientists from Mount Sinai
15 would want access to the data, discussions would be held and access to the data would be made available.

The University of Pittsburgh, University of California, Mayo Clinic, Johns-Hopkins...these are not names pulled out of the air, but these are institutions where we have
20 made available, to the extent that we had, or would have made available if in fact the data in the bank were extant...so the policy of availability is there. What's the point in having this resource if you are not going to make it available for scientific milking, if you want to call it that.

25 DR. DUPRE: Let me ask you this: I take it what you are describing is a request for data, for example, from the University of California or another epidemiological group that may be involved. If this is a request for data from a particular plant in a particular location, the decision as to whether or not to make the data available to that scientists would
30 still be taken at your level?

THE WITNESS: Absolutely. This is where the plant

THE WITNESS: (cont'd.) is not the ultimate site of the decision.

5 DR. UFFEN: Could I just make sure of it? That has been a consistent policy for some time and still is the policy?

THE WITNESS: Yes.

DR. UFFEN: With no change in the last year or two?

10 THE WITNESS: Again, I've been away for a year, but I cannot conceive that there would be a change in policy without my being aware, so I am prepared to say...I may have egg on my face...that the policy has not changed. I won't make any equivocation or caveats associated with that.

15 DR. DUPRE: Now, you are familiar, of course, with the scientific papers that were written by Dr. Murray Finkelstein concerning the workers at the Scarborough plant?

THE WITNESS: Yes, sir. I am.

20 DR. DUPRE: Is it fair to say that the decision that made the records which he was...on which he relied available to him was a decision that was made by you?

25 MR. EVANS: Excuse me, Mr. Chairman. I would like to object to the line of questioning as being totally outside the parameters of the goals of this Commission. I don't see that it's proper to inquire into this particular area, whatsoever.

DR. DUPRE: Well, counsel, you leave me in a strange position in that...

MR. EVANS: Well, I advance the objection knowing that the source...

DR. DUPRE: Your objection is well taken. The source of the question came from the chair.

30 Let me perhaps, if you will counsel, explain to you why I asked it, and for what it's worth I will give you that

DR. DUPRE: (cont'd.) explanation.

5 I asked that question, counsel, because this
Commission is concerned with a major area of occupational health
policy, and in terms of our approach to occupational health
policy, the availability of employee records to government
agencies, or for that matter to scientists, if they are employee
records that were gathered from employees resident in this
10 jurisdiction in which the business is being carried on, is a
relevant matter to occupational health policy as we see it.

So that is why I asked the question.

Among other considerations, of course, before us
may be questions like the following: Whether it would be advisable
for instance, to recommend that there be legislation in Ontario
15 imposing a certain obligation not now imposed on firms doing
business in Ontario.

Now, of course, perhaps this kind of legislative
interference is not warranted. It is nonetheless, I wish to
warmly assure you, counsel, most material to us to get a quite
precise idea of how things are working at the moment.

20 MR. EVANS: I guess, Mr. Chairman, my concern is
not that you inquire into J-M corporate policy on the release of
medical records on a generic basis, but my concern increases
when you get down to specific instances citing Dr. Finkelstein's
involvement with the Johns-Manville plant in particular, and I
would only ask that the question be confined to J-M policy as
25 a whole in that generic sense. Then that doesn't concern me.

But when it gets down to particular instances, I
have a concern that there are private individuals using this
Commission for private concern, which I question is a legitimate
use of the Commission.

30 But I do share with you the fact that...or your
interpretation of the Commission that it certainly is proper to

MR. EVANS: (cont'd.) go into that concept on a generic basis, and I have no objection in that area whatsoever. My only objection is that it be brought down to a private level.

DR. DUPRE: I will call a huddle for one moment, please.

(REPORTER'S NOTE: At this time the Commissioners conferred among themselves.)

DR. DUPRE: Counsel, the Commission considers that this is an abundantly appropriate area in which to be specific, precisely because Dr. Finkelstein has done these studies on behalf of the Government of Ontario, which is the government that appointed, indeed, this Commission, and that indeed the study was of employees at a plant in this jurisdiction.

So at this point, after consultation with my colleagues, I will say that my colleagues have ruled my question in order.

MR. EVANS: All right. Well if I may then, I will simply wait until I hear that your question is put to the witness before I voice any further concerns.

DR. DUPRE: Thank you.

Now, if I could only remember what the question was.

But if I may reconstruct, I believe that my question was this - specifically with respect to the Finkelstein study, and with respect to the medical records that formed the basis of those studies, was it you, Dr. Kotin, who, pursuant to the general situation you have described, made the decision to make those records available?

THE WITNESS: Yes. And again, since...when I say I make the decision, it isn't sitting at some Olympian height, but with appropriate input the ultimate decision is mine.

THE WITNESS: (cont'd.) Really, that's it.

5 DR. DUPRE: Now, you know, if I can put it back in your general context, I mean presumably what you would have weighed in making this decision would be matters no more momentous than the following: (a) that the principal investigator was indeed a qualified individual, and (b) he was working for a public agency that you could take that they are a responsible agency?

10 THE WITNESS: No, I think we would demand more than that, at least on the second go around. Happily, I can, you know, as I see some smiles around the room, let me first state that the record is replete with making available to regulatory agencies, sometimes with ultimate cost to the corporation, data - whether it would be the Occupational Safety and Health Administration, the Environmental Protection
15 Administration, the Toxic Substances Control Administration and so on - so the issue of making data available to the government on a volunteer basis as distinguished from a regulatory basis where you have no option is not the issue.

20 I think what we have done is bend over backwards... and as I say I recognize Dr. Finkelstein because I think we spoke to one another the last time I was here. If he were a pathologist, I have no hesitance to say that he should either be the head of the biggest department in the world or should be a shoemaker, and I've told that to many persons who have pretended to be pathologists. I have no such judgements skills
25 in the field of epidemiology.

30 But we have people in our shop who do, so that the combination of Dr. X and the agency is one thing. We would like to know what the protocol is, we would like to know what the questions are that are being asked of the data, we would like to know what the layout is...and we are not asking for a NIH-type application, that would be ludicrous.

5 THE WITNESS: (cont'd.) What we are asking for is a partnership, the identical partnership we had with Mount Sinai when we went through our mine in Baie Verte; the identical partnership we had with Mount Sinai when they had access to all of our employee retirement records at our Manville plant; the same information that we had in relation to all of our asbestos-operating facilities when we made the data available to Memorial Sloane-Kettering, Hopkins, Mayo, St. Mary's Hospital in Grand Junction.

10 So it isn't some kind of an outlandish series of barriers. So that, I think, is an element that...well, that was always an element in this situation. It may be one now.

15 We have tried to develop, and maybe it can't be done in Canada, with the government agency - despite all the headlines about the adversarial relationship between regulatory agencies and governments - by and large, and let's not put it on asbestos, let's go to other areas, there has been a government/corporate co-operative relationship in many areas - aromatic amines, polychlorinated biphenyls, areas of nitrosamines and so on, all areas that are potential occupational health 20 significant, and that's all we ask.

25 Now, the situation re Dr. Finkelstein, is, I'm sure, something...well, it has to be something that has happened within the past year because I have no firsthand knowledge, really. That's all I can say.

30 So it isn't a matter of just a will-o-the-wisp or a whim-type of decision.

DR. DUPRE: One final area that I would just like to again survey through the lens of the organization chart.

I refer to the area of medical surveillance programs. Now, would these...would local medical surveillance basically involve the nexus that I gather links the corporate

DR. DUPRE: (cont'd.) medical director to plant physicians, or on the other hand would surveillance programs basically be under the manager of health programs?

5 THE WITNESS: The manager of health programs would be the one responsible for the management of the program - not the professional substance. The medical surveillance is done in accordance with the medical manual that I'm sure has been introduced into the record here, and that is, of course, evolved
10 by the corporated medical director in association with the physicians throughout...so there really...one is concerned with the shell and the other with the substance, the manager making sure that they are done appropriately periodically, that they are sufficiently all-inclusive, but the actual interpretation of a pulmonary function or a rale or an inspiratory wheeze,
15 or what have you, is the responsibility of the corporate medical director and through him, the physicians or the institution responsible for the medical surveillance.

DR. DUPRE: Now could I ask you the following with respect to medical surveillance of J-M plant employees in Ontario? It has been brought to our attention that there
20 apparently is, of course, no problem at all with respect to the surveillance of continuing employees, but the matter of making surveillance available on a continuing basis to ex-employees poses a problem.

Is this something that is local, or are you
25 generally aware of a problem with respect to ensuring or attempting to ensure that medical surveillance will be made available to ex-employees generally?

THE WITNESS: You know, it is hardly a local problem. It's global, really. It's one of cosmic dimensions.

Inelegantly, I'm up to my eyeballs in consideration
30 of this being done informally, looking for...there is a committee,

5 THE WITNESS: (cont'd.) for instance, of four people, really self-appointed - Dr. Merchant (affiliation unintelligible), Dr. Ed Gensler of the occupational disease lab, Selikoff and myself - and we are looking at this, whose ultimate responsibility should it be.

10 California has gone a long way in addressing...I have testified before the California Legislature and CALOSHA, the California Occupational Safety and Health Administration... how should the State of California, no less than the Province of Ontario, address the issue of followup.

I can say that they have been working on this for about a year and they have come to no conclusions because of the complexities.

15 But clearly, the issue of concern over the worker exposed is not an issue. The mechanisms, I think, are a matter of some concern. If each person worked for only one employer his whole life, and had only a single source of exposure, there really wouldn't be a problem, and I think you can see that in many areas where this is...well, it's never that pristine...but
20 I know in relation to the followup in uranium mining (a) the size of the workers exposed, the population size, is very limited. You've got a manageable bank there, and informally this is being pursued, not in a hundred percent way, but I don't know how to answer it other than to say it is a problem, it merits attention, it is not in anyway going by default, because it is being it is
25 being addressed.

I don't know of any conclusions. I do know that by and large we have passed stage one in that issue, but they are in some form perhaps addressing the issue.

30 DR. DUPRE: Do I take it from your answer that some of these recent developments in California would be of interest to this Commission?

5 THE WITNESS: I really can't say that, because it has all been on the rhetoric level. There has been nothing substantive.

DR. DUPRE: I see. But in any event, this is through California OSHA? That would be the agency?

THE WITNESS: Yes.

DR. DUPRE: Counsel, back to you.

10 MR. LASKIN: Q. I just have a few very specific questions, Dr. Kotin.

Just coming back to your little chart there, does your biostatistics and epidemiology department actually carry out studies?

THE WITNESS: A. Analyses?

15 Q. Yes.

A. Absolutely.

Q. Has the department ever done a study of the Scarborough plant here?

20 A. As a formal study? It would have as part of its overall surveillance of the corporation. Now, whether it has gotten to...specifically am I aware of a Scarborough plant study that they did? No, I'm not aware and I would rather suspect maybe it hasn't...there is no way that I can say it has or has not been done. I don't know if the data are fully collated yet. I just don't know.

25 Q. Can you help me as to what you mean when you say it would have done it as part of its overall surveillance program?

30 A. Well, basically the purpose of the setting up of the data bank was to provide information on all the plants. Now, the information has not been gotten uniformly across the board. It is a program that is, oh, six years old. It has had a series of...when you are studying a program you always have the

A. (cont'd.) issue of addressing current problems as well as bringing archival ones up to the front, and so on.

This has been delegated to Dr. Chase.

Q. Dealing specifically with Dr, Finkelstein's studies, and I'm not asking you to put your medical hat back on for the purpose of this examination, but certainly if you and your department have reviewed those studies, I would think this Commission would be very interested in any comments you and your department would have on those studies, either by way of the accuracy of the underlying data or comment or criticism on the studies. I'm not necessarily asking you to tell us today, but could we at some stage have your comments, or those of your colleagues?

A. I can speak with no authority for my colleagues, but I rather suspect I still have a high titer of persuasion with them, so I will give you...leave the one bridge unburned that I can...would I be delighted to review it in the same way that I would review it as a member of the editorial board of the Medical Journal of Pathology, or the Journal of Occupational Medicine, or the International...I want to get all these in...but be that as it may, I would be delighted to. As long as I know you are going to be in session for quite some time, I will...

Q. The Chairman is rolling his eyes, Dr. Kotin.

A. No, I'm not going to get it done this weekend, but certainly as I wait for fish to bite, I would be delighted to do it because I have read it. I must say that at the time... you don't doff your editorial hat after thirty-five years...I've got a well margin-annotative, and this isn't necessarily critical, it may very well be laudatory, but I've read it and so it really won't be that formidable task.

But I would be delighted to do that, and I think you certainly have every right to ask.

Q. We would certainly welcome that.

MR. EVANS: Excuse me, Mr. Chairman, may I approach the witness for one moment, please?

DR. DUPRE: Please.

THE WITNESS: Maybe I've said the wrong thing.

(REPORTER'S NOTE: At this time Mr. Evans conferred with Dr. Kotin.)

THE WITNESS: Yes. I would be delighted.

MR. LASKIN: Q. Thank you very much, Dr. Kotin. I think, sincerely, the Commission would welcome your comments. Can I just ask you a couple of specific questions on your no=smoking program, and you or Mr. Reese made available to the Commission various arbitration awards in connection with that...

THE WITNESS: A. Right.

Q. ...and I notice that one of them was subject to appeal, and I guess what I'm really asking you is to give us a status update as to whether a court has actually adjudicated upon the program in any one of the arbitration proceedings that you have had?

A. Oh, yes. The one that went was to the circuit court...this is Dennison, Texas case with the International Association of Machinists. It went to the circuit court.

Q. That's the one where the program was upheld for new employees, but not for current employees?

A. No, that's the one where the program was upheld for smoking areas, and restricted smoking as distinguished from a total ban on the plant.

The circuit court held that the arbitrators...upheld the arbitrator's award, but made it very, very plain, as the arbitrator did himself when you read, that the issue was not smoking or not smoking, the issue was the compatibility of the

A. (cont'd.) arbitrator's award with the collective bargaining agreement.

5 So I think that's very, very important because I must say that after the award, at the IAM headquarters on Connecticut Avenue in Washington, one of the vice-presidents mentioned to me, Paul, I hope you don't construe our fighting this as strongly as we did as endorsing smoking. It was a matter of things that had to do with collective bargaining, of course.

10 Q. Sure.

A. All I can do is pronounce the words. I have no skills in collective bargaining.

MR. LASKIN: I wonder with the assistance of, perhaps, Mr. Evans, he could at least make available to us a copy of that decision so that our records on that matter are complete?

15 THE WITNESS: Yes.

That was the only arbitration, incidentally, in which the corporate position was not upheld.

MR. LASKIN: Q. Have I got the program correct to understand that in respect of prospective employees it is a condition of employment that they be nonsmokers, period?

20 THE WITNESS: A. Yes. That was purely a pious hope, because basically we can't go into their home, but alternatively a violation of that as a condition of employment could result in a necessary dismissal.

Q. You require the answer to the specific question on the employment form, and say that if the answer is a misrepresentation that is grounds for dismissal?

25 A. I think that's...

Q. Words to that effect, okay.

And in respect of existing employees, the rule is no smoking on company premises?

30 A. Exactly.

5 Q. Can I ask you what your judgement is on the second half? On how successful that has been, or what do you see as the merit of a program that provides no smoking on company premises but allows you to smoke in the home and so on?

10 A. I will make the Commission privy to an article that has been submitted and accepted, and this is a paper that is going to be published by Sakomoto, Paul, Helen Young and Kotin, which is going to say that since the institution of a no-smoking program, all class fives and sixes...forget about the numbers...all sputum cytologies that are either suspicious four cancer or conclusive four cancer have entirely disappeared from our west coast employee population. Remarkable.

15 And happily, for once, the work is being done by ...and this was the rationale for going, not to the corner pathologist when we instituted the no-smoking program, but going to the Memorials and the Mayos and the St. Marys and the University of Californias, so that the data would be unchallengable in terms of the competency of the performance.

20 That is remarkable.

It's not going to be a long paper - four pages.

25 To have the dean of World Cytology verify this observation, from our point of view, verifies three basic assumptions that we had - that but for smoking, lung cancer as a problem in the asbestos industry would be nonexistent, virtually nonexistent.

Number two, that while the co-effect of smoking and asbestos in increasing the risk of lung cancer is so, the asbestos is the after, is not the indispensable element.

30 The third is, that changes that occur in the respiratory epithelium, as has been known in cigarette smokers alone for a long period of time, now are applicable to asbestos workers who smoke. They are reversible on the basis of the

5 A. (cont'd.) really not-inconsiderable work of Dr. (unintelligible)..and as I say, it really is monumental, it isn't going to affect the orbiting of the earth, but it really is the first time that a major program has had a quantifiable beneficial impact on morbidity and mortality, in a six year period.

10 DR. MUSTARD: Excuse me. You said sputum, and you slipped in the word mortality. Have you actually got mortality figures for cancer from these people, or in sufficient numbers to let you draw conclusions?

15 THE WITNESS: No. But basically what we are doing is saying that a conclusive four or a suspicious four cancer, on the basis of sputum cytology, has a well-documented statistical risk associated with it - whether it's epidermoid or adenode, and basically we say we have eliminated those and we think we are not being speculative in saying with their elimination the corollary of their actions should be the beneficial impact.

20 The mortality data in our population are definitely not available yet. It's far too soon.

DR. MUSTARD: Can I ask some additional questions?

MR. LASKIN: By all means, Dr. Mustard.

25 DR. MUSTARD: What's the evidence relating to the sputum cytology in workers only exposed to asbestos fibers, in terms of cancer? As opposed to the effects of smoking?

THE WITNESS: We have seen no either suspicious four or conclusive four cancer in our nonsmoking asbestos workers.

30 DR. MUSTARD: The question I'm trying to get at is the carcinogenic effects of asbestos fibers producing effects that are detectible in sputum. I'm unaware of any evidence showing that that actually does occur, and I'm wondering if you have evidence of that?

THE WITNESS: No, we have evidence to the contrary, that asbestos alone is not a pulmonary carcinogen.

5 DR. MUSTARD: Well, now, my question is related to sputum cytology.

THE WITNESS: I'm sorry. Go ahead then.

DR. MUSTARD: What I want to know is, there is reasonable reason for why smoking produces changes in the lining of the lungs which affects what you see in the sputum.

10 THE WITNESS: Right.

DR. MUSTARD: The testimony here about the effects of asbestos and the cancers associated with it both experimentally and in human exposure, indicate that it's not exactly the same process as with cigarette smoking, so what I'm trying to get at, if you take the mesotheliomas for example, I think we both agree that it would be unusual to find cells in the sputum indicative of a mesothelioma...at least I would be surprised.

15 And also, I'm trying to get at the question of lung cancer itself, as to whether there is any good evidence that indeed you can get a sputum cytology with asbestos exposure and lung cancer in individuals who have not smoked?

20 I'm not aware of that having been done.

THE WITNESS: No, the only...since the sputum cytology has been applied indiscriminately to smokers or nonsmokers, with the rubric being asbestos exposure, the sputum cytology in the nonsmoking asbestos worker has not...that's all I can tell you, but the answer to your question is the reverse data has never been looked at.

25 DR. MUSTARD: Therefore one could not conclude that the change in sputum cytology in people stopping smoking, but if they are still exposed to fairly high levels of asbestos, would not preclude them from showing lung cancer?

30 THE WITNESS: This is a different order. To me, it would, but that's a personal opinion.

DR. MUSTARD: Thank you.

5 THE WITNESS: Because basically the role I ascribe to asbestos in the evolution of lung cancer would fall into the area of discussion.

MR. LASKIN: Q. In any event, did I take your offer to go so far as to provide us with a copy of this particular paper?

10 THE WITNESS: A. Yes, we can get that to you. That, too, would be some time in late July.

Q. Thank you.

15 All right, let me turn to a slightly different topic, and that is claims for compensation. I'm not going to get you into the medical aspects of those, but I take it you would be aware that in the ordinary course employees, ex-employees, spouses of employees, have filed claims for compensation in this jurisdiction, in respect of employment with Johns-Manville?

A. Yes.

20 Q. And what I wanted to ask you was, in your capacity as senior vice-president, health, safety and environment, whether you have given any advice to the people here in Ontario with respect to those claims, either by way of defence of those claims, or the manner of dealing with them?

A. Our role has been essentially to verify the presence or absence of asbestos-related disease when requested.

25 Q. Would that request come from the Workmen's Compensation Board or from your own people?

A. The Workmen's Compensation program at the Manville plant.

Q. What's that?

30 A. We have a Workers Compensation unit, as part of the insurance program, and they have people who say here is a request for workers compensation, what is your reading of the

5 A. (cont'd.) situation in terms of the, you know, the totality, the existence of the disease, the diagnosis and so on.

Q. On the organization chart, where...

DR. DUPRE: Let me find it.

THE WITNESS: That would be an insurance. That's not part of our...workers comp is not part of HS and E.

10 MR. LASKIN: Q. Perhaps you could look at the exhibit you've got in front of you and pinpoint where we find it.

THE WITNESS: A. Yes. That would be the senior vice-president for legal.

Q. Senior vice-president for legal?

A. For legal.

15 Q. That would be Mr. Markeson?

A. No, no. That would be Mr. Parker.

Q. Mr. Parker.

And there, then, is a specific compensation branch to the legal...

A. The legal department.

20 Q. Okay. And is that...

A. I could be wrong. He might report to the senior vice-president of finance, but I think he reports to the senior vice-president. Don't let me speculate. A phone call will get the answer immediately.

25 Q. But let us assume, and help me if you can, and if you don't know, certainly by all means tell me, but let's assume a situation here in Ontario where a worker indeed who was an employee at Johns-Manville files a claim for compensation as a result of an alleged occupational disease, whatever it may be.

30 Presumably, Johns-Manville here finds out about that claim. Can you help us as to what contact, if any, there might be between either the company here and your compensation

Q. (cont'd.) department in Denver?

5 A. Well, the company has a plant physician, first of all, who is brought in to evaluate, look at this person and so on, and it may stop there. It may go on to many...there is no way of knowing, but I would imagine most probably never get to the world headquarters in terms of being successfully addressed by the competent medical care that exists in the plant physicians, employee relations and management.

10 So that if the plant physician provides the appropriate medical advice, that's it. He can turn and say, let's discuss this with world headquarters or...

15 Q. Is one of the questions that's up for decision as to whether or not the company is going to defend the claim?

A. That would not be in our shop.

Q. All right.

20 A. Our position...we are asked if this person has an asbestos-related compensable disability, seeing as we are talking about compensation...and when asked, we give our opinion.

Q. Who asks you that?

A. It can be the physician at the plant, it can be the workers compensation unit within the department of finance, it can be employee relations, it can be across the board.

25 Q. Who would be vested with the decision, if indeed one is made, as to whether or not to defend a compensation claim, here in Ontario?

A. The workers compensation unit.

Q. In Denver?

30 A. I imagine...which is headquartered in Denver, but not totally resident there.

Again, I think that the decision is made there, but

5 A. (cont'd.) the decision weighs heavily on the recommendation of the medical department, corporate...or HS and E, corporate medical director, and his professional staff, because there are certain instances where the disability and the relationship is obvious. In other areas, it's cryptic, and in other areas it's wholly spurious. We have the whole range from infra red to ultra violet, and every wavelength in between.

10 Q. Do you, yourself, have any personal recollection of being consulted...

A. Oh, I sure do.

Q. ...in claims originating out of Ontario?

15 A. Well, that I can't say. Personally consulted in terms of claims? Yes. Particularly when I was bicephalic and had both a head for the vice-president's job and one for as corporate medical director.

MR. LASKIN: Dr. Mustard?

DR. MUSTARD: This may be slightly off target, but I would like the answer to it if you can give it.

20 In our review of the Ontario scene, we have come up against a situation of organizations that have used asbestos who have ceased to use asbestos, and then have workers who are left who have been exposed, and the policy is very complex.

25 I was wondering if Johns-Manville has any policy in relation to workers employed in your asbestos plants, then you close those plants and no longer operate in that particular sector. Do you have a policy on how you handle the question of their potential claims, which might be fifteen, twenty years down the road?

THE WITNESS: I'm unaware of any policy. That doesn't say it doesn't exist, but I am unaware.

30 DR. MUSTARD: So that there is no policy to maintain their records, to have a followup on them and if they do come down

DR. MUSTARD: (cont'd.) with something which is obviously asbestos-related, to make sure they have access to compensation?

5 THE WITNESS: There are two separate things that I think should be emphasized. The maintenance of the records is one aspect, and where indeed the records are maintained.

10 The second part of the question, the relationship of the maintenance of these records to workers compensation, I can't answer. That's why I sort of bifurcated the question.

We do maintain records, after they are gone, after they are gone. They are part of the data bank.

15 DR. MUSTARD: Yes, and then you get into jurisdiction problems as to who has access to that data bank if it's held in the head office in Denver. Presumably it's not automatically available to people in other jurisdictions who want access to it.

THE WITNESS: That I cannot say.

20 DR. MUSTARD: Do you have a policy about who has access to it? In other words, if a worker in another jurisdiction and area than Denver should want access to it...

THE WITNESS: To his own records?

DR. MUSTARD: Yes.

THE WITNESS: We sure do have a policy. He has access to his own.

MR. LASKIN: Dr. Uffen?

25 DR. UFFEN: Yes. Could I just be clear - you used the word disability, that you are consulted, you and your organization.

30 In fairly recent testimony from medically-qualified people, they made a very nice distinction between disability and impairment. Is that something that you would do? Did you mean disability or did you mean impairment?

5 THE WITNESS: I will be glad to submit the results of a meeting I believe that I mentioned earlier, addressing this. This is the meeting that was held at Mount Sinai Hospital with Drs. James Merchant, Dr. Irving Selikoff, Dr. Paul Kotin and Dr. Ed Gensler in absentia, where this was specifically addressed at the request of the government, done in an informal way.

10 It's a most enlightening document and particularly sensitive. It addresses the issue of impairment...and it's a consensus document..the issue of the progression from stigmata change, impairment, disability and...yes, there is a distinction to be made. It's almost how many dancing on the head of a pin, because impairment is almost a nonquantifiable medical concept... or why would you not say disability. We are all impaired just by virtue of having lived as many decades as we have, our visceral organs don't work as well.

15 I think that from a medical point of view impairment and disability is a confabulation that serves no useful purpose.

20 Now, if it's necessary from...I cannot speak as emphatically, I don't know whether it's correctly or not... from the point of view of legislative or regulatory or workmen's comp and so on, because then you have a different set of issues. You are bringing in the issues of the use of medical data rather than the substance of medical data.

25 DR. UFFEN: My intuition says that that document may be valuable to us, so I would appreciate it if we could have it.

THE WITNESS: I'm just want to insist on one thing. I'm going to ask Mr. Laskin to write me and ask for all three - not that I'm that highhanded, but...

30 MR. LASKIN: I will be happy to, Dr. Kotin.

THE WITNESS: ...now that I'm self-employed, I'm rapidly forgetting too many things.

5 MR. LASKIN: Q. Just to pursue this compensation matter just a little further, when you are consulted with a recommendation on a particular claim, what information do you receive and what guidelines guides your choice of recommendation?

10 THE WITNESS: A. The information I receive is the starting point - it may be adequate, it may not be. I recall referring many cases to physicians at the local academic health center, whatever it may be throughout the company, for
15 evaluation. You know, Dr. X, here is somebody that the records are really inadequate and where you have an inadequate bit of information.

We have instances where the information is complete, information where it is so incomplete that you want additional information, and then you have, again, varying
20 degrees between the two extremes.

Q. Do you have any particular criteria that you yourself apply, and I'm think in terms of are you looking for a minimum period of exposure...

25 A. You can't generalize, because when you are looking at a worker all these statistical things are nothing more than guidelines. Each individual worker and each individual situation is a law unto itself, and in a situation like this, statistics goes out the window, other than in relation to the person. It decides which room you are going to be in that has the windows, so if it's an ingrown toenail then you are not in that kind of a room, if it's a situation of impaired pulmonary
30 function you have a different situation.

Yes, obviously I have a set of guidelines.

The thing, I think, that begins to distress me in all of this over the past eight years is that there is no set of medical rules that are unique to the workplace. The
35 principles of good practice of medicine are universal, whether

5 A. (cont'd.) it's in Podunk, Iowa, or at the University of Toronto Medical Center, and just as a physician, I don't know pathologist, I did do internal medicine for a while, my approach to a problem in a patient is no different now than it was when I was in San Luis Obispo, California. I think that applies to most everyone.

10 Q. Can you help us any further as to whether there are any criteria that apply in the compensation section as to whether or not to defend any particular claim for compensation?

A. Well, criteria are medical judgements, and all you can have is the broadest guidelines, which really cannot substitute for the physician looking at the case.

15 The best evidence of that is, heaven knows in Canada and the United Kingdom you have a much better system for workers compensation than we have in the U.S., but even your Workmen's Compensation Boards, particularly those where I happen to be friends with members who have been on them, it will be a three-to-two vote or a two-to-one vote, or you know, there isn't unanimity even in a group of people who have been selected by virtue of their special knowledge and training in the field of diagnosis, causality, disability, evaluation and prognosis, the five sides of the pentagon in evaluating a case.

20 So they don't agree. So you can see how highly individual the judgement in workmen's compensation is, from the medical aspect of workmen's compensation.

25 Q. Slightly different, but a cross-related question, is there any corporate policy respecting the removal of asbestos employees from the workplace, or at least from further asbestos exposure?

30 A. Oh, there are guidelines...again, they are guidelines where, sure, a person can be removed from asbestos exposure.

Q. Can you help us briefly? What are your guidelines?

5 A. Well, the guidelines are the individual case, so a person who has a film in a series of ten-year films where there is a minimal change ten years ago and this is still the same minimum change, you don't remove.

If it's a series of films...very shortly a progression, you do change.

10 If a person has one or two years left before retirement, you treat him a little differently than somebody who has just been on the job five or six years, and again, you cannot make...

Q. Fair enough.

15 A. The principle is, you practice medicine as though the fellow were coming into your office, or you were back at your academic health center, and the principles of good practice are universal.

20 Q. Let me switch topics entirely and ask you just one or two questions about approaches to standard setting, and I won't spend a lot of time on it, but I know you've written on it and certainly have some expertise in carcinogenesis.

25 One of the...we have had a number of research studies that have been prepared for our Commission and at least one of the authors of one of those studies has commended to us a policy not unlike the cancer policy that was espoused by OSHA during prior administration, and I would be interested in your judgement as to...without...leaving aside whatever criticisms you may have of the actual policy that has been articulated, whether in your judgement we know enough about cancer at this particular point in time, or whether cancer is sufficiently generic that we ought to be thinking of articulating a policy like that.

30

5 A. A policy...all I can say is, I think I testified on the generic standard longer than any other single one individual, so there are pages in the Federal Register that way.

10 I might say that my opening gambit was the need for a generic policy cannot be overstated, and it's insane to try and regulate agent by agent. But as I said at the time, to have such abominable science in support of such an elegant idea, I felt as a personal affront since in my day in government I think I had a hand in moving in the direction of a generic standard.

15 So if you are going to emulate the old OSHA standard, for what it's worth...but that doesn't say you shouldn't approach the control of carcinogens.

20 You are really dealing with four major and fundamental issues in carcinogenesis - is or is there not a known adverse effect level of exposure. I won't use the incendiary word threshold. Of course there is a no-adverse effect level of exposure. It is utter nonsense to say that there is no threshold for the action of a carcinogen, and the testimony before this Commission from the William Petos, the Manny Farbers, I've read them all, if Manny Farber is going to...and he was a former professional associate...is going to say that a single molecule of an alkylating agent can react with a single base in a DNA sequence, and a single nucleotide in the sequence, therefore there is no threshold because one molecule will alter the genetic material - of course he's right.

25 But there are seventy million miles between the reaction of an agent and the genetic material, and the ultimate evolution of a cancer, and Manny has done perhaps the most elegant work in dissecting the various stages during early initiation, meta-initiation, post-initiation and so on.

30 I don't want to make this into a seminar, but basically, from the point of view of the development of cancer -

5 A. (cont'd.) not the interaction between a molecule and genetic material - there is clearly a no-adverse effect level. It varies for agents, but it's there, and I can demonstrate it as exquisitively quantitatively, as many thousands of scientists have done, in the lab.

10 Now, whether the animals died at thirty months of age, if they had lived to thirty years of age they might have gotten a cancer. I'm not prepared to say, but I think it's irrelevant. There are levels of exposure to a carcinogen for a total lifetime with no impact on morbidity, mortality, no impact on pre-empting causes of death that do not result.

15 Now, I feel very, very strongly about that and I must say first it is a minority opinion, but it's a minority that is becoming substantively larger with the passage of time.

It's today's heresy, that I hope will become tomorrow's orthodoxy.

20 Number two: The use of animal data was...the interpretation of animal data was really abominated in the generic standard in the terms of a cavalier disregard of not only species differences, which any intelligent high school student would give, but even a basic biology - the assumption that benign tumors and malignant tumors are unity in terms of response to a carcinogen, is nonsense.

25 It's even nonsense in animals, and especially nonsensical in man. The progression of changes in rodents really has very little counterpart in man. Most neoplasms in man do not begin as benign neoplasms and then progress to malignancy.

30 So extrapolation from specie here...high dose to low dose...I love the...that extrapolation to species has, and again I will be glad to give you...

Q. Just before you leave that, I don't want to

5 Q. (cont'd.) pursue this forever, but are you saying simply that they didn't place enough emphasis on...or any emphasis on epidemiological work?

A. They were ignorant. They were ignorant. It isn't a matter of decrying animal data. I have sent too many millions of mice to their makers to suddenly throw out animal data...

10 Q. That's what I wanted to get at.

A. ...but you need an element of judgement in interpreting it.

Then I love the biological innocence that says you can telescope in time a phenomenon, a biological sequence, by increasing the dose. Assuming that...do I make my point?

15 Q. Yes.

A. That since the animal will only live thirty-six months, therefore you can increase the dose thirty-six... and if he lives thirty-six months, it is one-tenth of the time of a homo sapien, or one-eighth of a time...therefore if you give ten times or eight times the amount, you are going to telescope in time the effect on the basis of increasing dose.

20 There are certain instances where it's beautifully applicable. But as a principle, I am unaware of any data. The whole area of dose-dependent metabolism, which is a fancy way of saying that on the basis of pharmacologic and biochemical principles two grains of popcorn will be metabolized one way, 25 it is very reasonable that fifty grains will be metabolized a different way, particularly if intercurrent events come in and modify the production of these very highly functional enzymes, and so on, and so that is the third principle, the first being again threshold, animal extrapolation, high dose to low dose, and then the fourth is the evolution of the neoplasm.

30 The two fancy words are morphogenesis and

5 A. (cont'd.) pathogenesis, morphogenesis meaning the development of the structure which I as a pathologist can either see with my two naked eyes or see under the microscope.

Then pathogenesis relates to the evolution of the pathology, the progression of the pathology leading to the development of an overt neoplasm, a cancer.

10 Again, these were totally disregarded in the generic standard, in terms of the differences in...between species and nonspecies.

15 Now I'm going to say something that I want to elaborate on very, very briefly. It's nonsense when they say you tell me...give me enough time and I can prove everything is carcinogenic. That's borscht. There are carcinogens and there are noncarcinogens.

20 But give me enough time and I will give you the answer that you want from a group of representative carcinogens - polycyclic aromatic hydrocarbons, aromatic amines, azo dyes, alkylonitrosamines, radiomimetic agents - and I will give you a hundred percent tumor response with betanaphthalamine, or a zero response, and I won't do it in a gimmicky way where the animals will die before they get to tumor. I will know how to buffer it.

Not I. It's work I haven't done. It's in the scientific literature.

25 You can get a...in fact, we use in research. When you do an experiment you can say I'm going to give these animals a hundred-and-eighty-day seventy-five percent tumor dose reponse. That is how critically you can control tumorigenic response with pure chemical compounds.

30 Well, the corollary of what I'm telling you is, that by and large there isn't a one-to-one relationship between the existence of a carcinogen of exposure to a carcinogen and the universality or the inevitability of the ensuing neoplasm.

5 A. (cont'd.) And everything I have said here has got libraries full of data. I don't think anything I have said is really challengable in terms of the knowledge of carcinogenesis, in terms of principle. Nuances, yes, except the business of threshold or no-adverse-effect levels.

10 There there is...there we are dealing in a never-never land, and I think what we have done is made the mistake of trying to use science to make social decisions, with which I have no quarrel.

15 You know, we made a social decision in 1980 when we elected this administration, in 1976 for the other administration and let's hope in 1984 we make another different social judgement, but basically that's...so those are four things that have to be considered if the Province of Ontario is going into the business of regulating carcinogens.

20 As a further aside, predictability is what you are looking for. To a remarkable degree you can address the issue of carcinogens in the environment, but what about company X that wants to put product Y on the market, and it's a very useful product and you have a whole series of tests - everything from in vitro tests to elaborations on the aims, technique - terribly, terribly important. It gives you a nice first cup, but the naive assumption that we will ever be able to correlate structure and function in terms of carcinogenicity is the ultimate naivete.

25 When something as simply as carbon tetrachloride, a simple molecule, CCl_4 , and complex molecules like cyclopentaphenanthrenes, the benzpyrenes of this world and so on, when something as inert as a hunk of asbestos or a piece of teflon, or something as highly reactive as an organic peroxide can produce cancer, when the molecular wastes differ in orders of magnitude between the simple and the complex carcinogens, 30 when their spheric characteristics - what they look like in terms

5 A. (cont'd.) of their geography - wander all over the lot, the idea that you can look at a molecule and get anything more than just a crude idea, but to regulate on that basis...and that, again, was what the generic standard was prepared to do in terms of the dignity it was going to ascribe to the aims tests.

If you take a compound like benzpyrene...well, I won't even go into that.

10 Most complex chemical compounds have what we call isomers, and that is they have the same chemical elemental makeup, but they differ in structure. For virtually every known carcinogen that exists, there are noncarcinogenic isomers... 1, 2, 5, 6 -benzanthracene; 1, 2, 3, 4, 5-benzanthracene; benzpyrene; 3 methyldiethylamine asobenzene; 5, 7, five prime
15 seven...this is...again, I apologize for making this into a seminar, but this is crucial and critical in terms of the regulation of carcinogens.

Now, having said all of that, do I still think a generic standard is possible? I surely do.

20 A sound-science generic policy on cancer will obviate the necessity of fighting acrylonitrile, polychlorinated and polybrominated biphenyls and the like.

But don't use the OSHA generic standard as a model. It's a one-way ticket to disaster. That is just a highly-personal opinion, but I think it's one that I'm entitled to have.

25 Q. Fair enough.

A. I didn't mean to scare you, either.

Q. No, but when you listed the four critical questions...

A. That is just structure-function correlation.

30 Q. All right...five questions. Are you telling us that in order to develop a generic cancer standard that we've

Q. (cont'd.) got to address...that the answers to these five questions, whatever they may be, form the basis of your generic standard?

A. Well, you see...

Q. Is that what you are saying?

A. Yes. What does an asbestos fiber have in common with an ionizing track, following the exposure to ionizing, in terms of biology? About as close to nothing as possible, other than under certain conditions - exposure to both can increase the risk. But that's where the similarity ends. Biologically they are as different as can be.

We know enough now why they are biologically different. Again, one of the...there are eternal verities, I hope this isn't an eternal falsity...that we are ignorant about cancer. We've got an embarrassment of knowledge about cancer. We have a tragic unwillingness on the part of the young scientific generation to clean cages...or the analogy I always use is that nobody wants to wash dirty diapers anymore. They want to go right from their post-doctorate or from their medical school and become an expert...there are enough people waiting to have these - getting old and crotchety.

Sermon over.

Q. No, thank you very much.

Just a few other specific questions before I change subjects.

I'm not sure whether in all this organization we ever followed down the medical side of it, but am I correct that under the corporate medical director, and perhaps reporting to him, are all of the physicians who are servicing your operations in various local areas?

A. Correct.

Q. Is the policy that all of those physicians are

Q. (cont'd.) not company employees, but rather are retained?

A. It varies.

Q. Varies?

A. Everything from full-time employees like we used to have at the mines and still have at our Manville plant and Wakegan plant, to part-time physicians in other plants, to contract physicians and then fee-for-service physicians.

Q. Is the determining factor simply the need for their services and practicality?

A. Exactly.

Q. Then another matter I read about in, I think the for ten K, which I don't think we have ever been able to understand completely, is the so-called self-insured scheme at Manville.

You are shaking your head.

A. I know nothing about it.

Q. You know nothing about it? You can't help us on what that's all about?

A. I am that reluctant to talk about things I am only marginally informed on. Here I am totally uninformed.

Q. Okay.

DR. UFFEN: Could I just ask a quick question on the medical practitioners?

MR. LASKIN: Yes.

DR. UFFEN: If the man is under contract, who writes the contract, who does he have is contract with?

THE WITNESS: The contract sits in the records of the health, safety and environment.

DR. UFFEN: You mean he gets paid by them, or does he get paid some other way?

THE WITNESS: He gets paid by the local jurisdiction.

5 THE WITNESS: (cont'd.) He is responsive, in other words. He responds to our call when we have our bi-annual meetings and bring all the physicians in, we don't ask anybody. We just say come on in.

10 MR. LASKIN: Q. Just one or two other factual questions, and I wanted to ask you about the tort litigation in the United States. Not from the point of view...I know you have testified in many cases and so on...I just want to factually know if you can tell me - has there ever been a case of domestic family exposure that has gone to the courts and actually been adjudicated on by a court, to your knowledge?

THE WITNESS: A. I would have no idea.

15 Q. You don't know one way or the other? Okay. Do you know one way or the other whether there has ever been a case involving a consumer product, that has been adjudicated upon?

A. How do you confine a consumer product?

Q. A hair dryer, something used in the home.

A. I have no knowledge.

20 Q. Okay. You have no knowledge as to whether anything has been adjudicated upon? Okay.

25 One final question which has to do with the use of crocidolite by Manville, and can you tell us whether, from your perspective and sitting as senior vice-president, health, safety and environment, whether your approach to exposure levels in the workplace differs in those workplaces which use crocidolite, as opposed to those which do not?

30 A. It does not differ. There sits in the federal archives of the Province of Canada (sic) two documents I submitted... which I'm sure have been included in the record...when Mr. LaLonde was still the Minister of something or other that had to do...anyway it was with his office I made a presentation...1975 or 1976, or

5 A. (cont'd.) something like that...the thesis of which is the data on crocidolite do not warrant the different standard, as far as I was concerned...the data that we had before us.

If you want a copy of that, I'll be glad to send you one.

10 Q. That personal judgement of yours is in turn reflected in the corporate policy of Manville, at the present time?

10 A. Well, not at the present time. It was until I left.

Q. Until you left?

A. Yes.

15 Q. So far as you are aware, that is still the policy?

15 A. To control asbestos effectively to control asbestos-related disease.

20 Q. Can you recall ever being made aware of at least an informal guideline in this province in the mid-1970's for crocidolite, at point two fibers per cc?

20 A. The only recollection point two brings up is British, but I recall nothing relative to an Ontario locale.

Q. No?

25 A. You can see how much I've forgotten. I don't recall. I think I would have, because basically at that time the issue of crocidolite versus the other amphiboles, the amphiboles as a group versus chrysotile, was a matter of major importance.

The British were treating it differently.

I saw flimsy evidence, but am I prepared to change my mind tomorrow about crocidolite? Of course, I am if the data are there.

30 DR. DUPRE: Just in connection with this, would you have become aware, while there were these goings on in Britain,

5 DR. DUPRE: (cont'd.) Ontario and so on, would you have become aware through your industrial hygienists or otherwise of the need to try to take readings of different asbestos fiber types, as well as fiber levels generally?

10 THE WITNESS: In addition to industrial hygiene measurements I think J-M has had for a long period of time the scanning and transmission electron microscope capability, and also under the light microscope with the appropriate phase contrast and so on, so fiber analysis was done, but to the extent that you say 'as a basis for policy decision', I'm not aware of any....not excepting the diversity between the two, there really would have been no indication in my mind, or as a corollary, the corporation's mind.

15 DR. DUPRE: I guess granting your own views on the subject, the point that I really had in mind was whether, given what certain jurisdictions were doing rightly or wrongly, one of the items that would have been considered by your division would have been how one adapts existing measurement techniques to a regulatory regime that would wish to differentiate by fiber...

20 THE WITNESS: I'm sure Mr. Raitze could answer that.

DR. DUPRE: That would have been going down below your...

25 THE WITNESS: Yeah, I don't think he would...if indeed the regulation had been promulgated at two-tenths of a fiber, you can be sure then it would become a matter of HS and E wide involvement, but Mr. Raitze, I'm sure, disposed of it effectively.

30 MR. LASKIN: Q. Did you, during your tenure as senior vice-president, health, safety and environment, ever have occasion to visit the Toronto operations of Manville?

THE WITNESS: A. Yes. Oh, yes. One time I met

THE WITNESS: (cont'd.) the plant manager or the nurse. Yes. Several times.

5 Q. Was that just a matter of routine visiting, or were there specific incidents...

A. Well, once I came up here to debate on Canadian Broadcasting Company a former member of your legislature, provincial legislature, NDP representative.

10 Once I came up here to discuss with then a member of the faculty at the University of Ontario, Dr. Morgan-somebody... again this would have been not the CBC but the other one...a television show on a Sunday night with a very attractive lady as a moderator...asbestos-related disease.

15 So that would have been two instances when I came. Then there were other instances where as part of my surveillance of the plants I would come to Scarborough, as I would go to Jeffrey, as I would go to Liege, Belgium, or as I would go down the street to Pueblo, Colorado.

20 DR. DUPRE: Do you recall who the plant manager was at the time you visited the Scarborough plant?

25 THE WITNESS: One of the times...and I have enough people here to correct me if I'm wrong...Bruce Machin, was he the plant manager at one time or another? Okay. So I remember one name. Whether he was there, whether he was plant manager at the time of my other visit...he might have been all the time...but there's one other name I'm trying to think of, but Bruce Machin's name does come to mind.

MR. LASKIN: I believe I'm finished my questions, Mr. Chairman. In any event, it's probably an appropriate time for some sustenance.

30 DR. DUPRE: Shall we rise to sustain ourselves, and return...

MR. LASKIN: Thank you, Dr. Kotin.

THE INQUIRY RECESSED

5

THE INQUIRY RESUMED

DR. DUPRE: May we reconvene?

Mr. Laskin...

10

MR. McCOMBIE: Mr. Chairman, excuse me. I would just like to raise a point, if I may, at this point, and I don't want to be too long because I realize we have a lot left to go, but in the morning session Mr. Evans raised a concern over some questions, and I didn't want to say anything at that point because I wasn't exactly sure if I had heard it correctly, so I took the opportunity to check with the reporter during the lunch break, and part of his submission was, and I'm quoting, "I have a concern that there are private individuals using this Commission for private concerns".

15

20

I guess I'm just raising this because it seems to me kind of an open allegation and I don't know whether he is referring to parties with standing, or other individuals, and I think it would be important that this be clarified.

DR. DUPRE: Any point anybody wishes to make with respect to what Mr. McCombie has just said?

Mr. Evans?

25

MR. EVANS: Mr. Chairman, I have a suspicion that comment was at least tangentially directed to me, in the sense that Mr. McCombie would like a response.

I will stand on what I said on the record. I think it's clear enough what I intended, and leave the interpretation for those people who choose to read the record.

But I think it was clear enough stated at that time.

30

DR. DUPRE: Mr. McCombie, I, like you, heard Mr. Evans use those words this morning, so there is no question about

5 DR. DUPRE: (cont'd.) the record as far as I am concerned, and I will now point out that those particular words were not in any way material to the ruling that the Commission made at the time, which enabled us to pursue the question.

10 So at this stage the Commission's response would be to simply let those remarks stand in the record for what they are worth. They are not material to our continuing examination of the witness, and the Commission would also offer the comment that in all the welter of points that have been made over these many months, now stretching, sad to say, to close to two years, we would often, frankly, be at a loss as to whether or not certain things that were being said were being motivated by public concerns as distinct from private concerns, so I leave it at that, and suggest that we proceed at this time.

15 MR. LASKIN: I have no further questions, Mr. Chairman.

DR. DUPRE: You have no further questions, Mr. Laskin? Okay.

20 MR. LASKIN: Thank you, Dr. Kotin, for being patient with me.

THE WITNESS: You are very welcome.

DR. DUPRE: Do I have a batting order? Mr. Lederer?

25 MR. LEDERER: I don't feel like I'm the leadoff batter so much as I'm the designated hitter this time. Everybody is pointing fingers as me.

CROSS-EXAMINATION BY MR. LEDERER

30 Q. I just have, Dr. Kotin, three, it might be said two, areas of questions for you, and I don't anticipate that I will be terribly long.

The first two, if you like, deal with the

5 Q. (cont'd.) Workmen's Compensation Board, about which Mr. Laskin had some questions, and then I have some questions for you about the dispersal of information to government agencies, and you will recall there were some questions about that this morning as well.

10 First of all, as I understand it you will be the ranking representative of Johns-Manville and Manville Corporation, or the Johns-Manville group of companies that this Commission is likely to see, or certainly that is scheduled to appear here so far as I'm aware, and the first set of questions that I have for you, the first area of questions, arises from that fact as opposed to your particular knowledge in the health, safety and environmental field.

15 All I really wish to do is to refer to some evidence we have had in the last couple of days, indicate to you that I find it a little odd, and see whether or not you have any comment to make about it.

20 I have asked both Mr. Machin yesterday and Mr. Cashman last week, about whether or not there is any particular policy that Johns-Manville has in relation to Workmen's Compensation claims - any policy that might guide people operating within that company as to what claims, if any, are to be contested or any other general policies that may apply to that, in this province governmental, program.

25 When Mr. Cashman was here, he didn't know the answer to that question, 'is there a policy', and as I recollect it his answer was that he anticipated that Mr. Machin would know the answer.

30 So when Mr. Machin came, I put the question to Mr. Machin. I think it's safe to say that Mr. Machin seemingly didn't know the answer either, and what he said was...if I

5 Q. (cont'd.) understood him correctly, and I hope I'm not misrepresenting anybody...what he said was, 'I don't really know the answer myself. That's a responsibility which I have delegated to somebody else'.

And I think he gave us the name of a physician, and I've frankly forgotten it.

I think he also said, in fairness to him, that you might know.

10 Now, first of all, having regard to the Workmen's Compensation Board in Ontario, that is the government program dealing with Workmen's Compensation in this jurisdiction, would you be the person who would know about any policy that Johns-Manville or the Manville Corporation would have in relation to that question?

15 A. I would be the one. Your perseverance has paid off.

Q. I beg your pardon?

A. Your perseverance has paid off.

20 Q. Well, I'm glad you see it in the relatively-complimentary terms of perseverance as opposed to some other approach to it.

25 A. Obviously, there is a policy. The policy that exists relates to multiple input. The input that HS and E has, that I as a physician have, or the physicians have, is to ascertain the validity of a claim for disability due to exposure to asbestos.

30 In the case of a moderate to extensive severe asbestosis, there would be no question. To, at least in my mind, a person who might even be a respiratory cripple as a result of chronic obstructive pulmonary disease, even though he may have worked for thirty years for Johns-Manville in the absence of any evidence of restrictive disease or the other criteria for the

A. (cont'd.) diagnosis of asbestos-related disease, he might terribly be disabled, but the workplace was not responsible for his disability.

Now, those are the cases where I think it is clear to say that the policy is verified or authenticated, frequently third-party authenticated, and that is the glory of your system here...that you have a panel who are quasi-...not quasi, I guess, government officials who have the imprimatur of government...a diagnosis of asbestos-related disease in its overt, unarguable sense, I don't think presents any problem at all.

Q. Well, what...

A. Let me just finish.

Q. Sorry.

A. All right.

But as with everything else when you are dealing with biological systems, there is a never-never land, and I would say that here the policy is more related to rules...is less related to rules than it is to the judgement of they physicians evaluating the person.

Q. You've said that last part earlier, and I've got a couple of questions about that.

A. Sure.

Q. That's really the second part of what I wanted to get at with you, but there's a couple of things you have said in that answer which concern me, and let me see if I can just backtrack you through it.

Firstly, as I understand your answer...my question was, are you the person who would know about the policies that Johns-Manville has with respect to Workmen's Compensation.

As I understand your answer, it is to say you are the person who would know about those policies insofar as it relates to asbestos claims.

Now, what I'm after at the moment is, are you

5 Q. (cont'd.) the person who would know about Workmen's Compensation with respect to all the claims that may be made, or only with respect to asbestso claims?

A. No, I would be the one that would be...I might not be, but the program would be...

Q. That is, your office?

A. ...would be the office...

10 Q. In Denver?

A. ...in Denver, in relation to the medical aspects, the verification of disability and quantification of disability.

I must say that in relation to injury, I am unaware of a person injured, distinguishing that from medical...

15 Q. Mmm-hmm.

A. ...on the work side, who has been denied, where there is any question of denial of Workmen's Compensation.

20 Q. Does it...well, you may, as an American, perceive this as misplaced nationalistic fervor, I don't know, but it strikes me as a little odd...and this was my original question, really...it strikes me as a little odd, and frankly a little discomfited, as a Canadian, to discover that the senior representatives of a company the size of Johns-Manville, in this country - excepting its international stature for the moment - a senior management of a corporation that size knows nothing, apparently, and defers to what in our terms is a foreign jurisdiction with respect to this rather fundamental issue in terms of occupational health.

25 Now, if you can...and maybe this is an impossible question...I would like you to sort of step back and attempt to be objective about this for the moment. Does it not strike you as a little unusual and perhaps not terribly helpful that in fact
30 Canadians here must depend upon the judgement of people in Denver

Q. (cont'd.) with respect to these issues?

A. You've asked a three-part question and I can't give you one answer to all three.

Q. I commend you for being able to dissect it into three. I thought there were about fifteen.

A. No, no. There are splitters and nonsplitters. I am a nonsplitter, so I try to get as few splits as possible. I can understand your discomfort. That's part one.

Part two: The distress over having to rely on U.S.A. policy in the absence of an equivalent level of Canadian competency and awareness and so on - again I can understand your discomfort.

What I'm trying to do is put myself, in my mind - and let us say that the world headquarters were somewhere up in Barrie rather than Denver, so as to get out of a metropolitan area, and the Scarborough plant were in Denver - yes, I would have some questions.

In terms of anybody suffering from it, I am unaware of any evidence that anybody has, and that's really the bottom line.

Q. That may well be the bottom line. Let me just express to you the conceptual foundation of my concern, okay? Or at least one potential conceptual foundation for it.

You have indicated, I think by implication, though not directly, that the Workmen's Compensation program here is considerably different than the one that one would find in the United States.

A. I say that not by implication, but factually. Overtly.

Q. All right. Happily, you seem to have said that it's perhaps better here than in the States. I don't know whether I read that correctly or not.

A. You heard it correctly.

Q. I beg your pardon?

A. You heard it correctly.

Q. Thank you.

What concerns me, among other things, is that where there is a comprehensive program, it seems to me to be too much to expect people in a foreign jurisdiction to be as totally aware of the ramifications of that program as people who are actually here and see it operating, and that that demonstrates a weakness, if you like...I don't know that I could put it on any higher plane...a weakness in the organizational structure that has been adopted by Johns-Manville in relation to this particular program.

MR. EVANS: Mr. Chairman, if I might, I have a little concern over this line of questioning in that I have no problems with inquiries made as to how the Johns-Manville workers' compensation program works and what the policy is. I am concerned that having done so, that we are now being put in a position, or the witness is, of having to justify what we have done, and account for any perceived deficiency in that that counsel may see, and I don't think the function of this Commission is to put Dr. Kotin in a position of trying to explain to the Commission why we, Johns-Manville has structured its compensation system the way it has.

I have no qualms of him explaining the way it is, but I don't it's fair that it should be on trial here, and that the witness be put in a position of having to justify what we have done and account for any deficiencies that some people may see in it.

MR. LEDERER: I would have thought that the logical end of what Mr. Evans is saying is that we can effectively attack that structure without ever giving a representative of the company an opportunity to defend it, and what I'm really doing is saying yeah, I see a weakness in it, what do you have to say about it, so

MR. LEDERER: (cont'd.) that we can have the assistance from Dr. Kotin to come to some understanding.

5 Without this kind of questions, should there be final submissions, or the Commission itself may well choose to see a weakness, without having had any opportunity to have the wisdom of the people effectively involved in it.

I think it would be an incredible thing not to allow these questions to be answered.

10 DR. DUPRE: All of the Commission's inclination is simply to ask Dr. Kotin if he feels comfortable answering this line of questioning.

THE WITNESS: Well, to the extent that it involves dimensions that were my responsibility, I have no problems answering.

15 So my response to you, sir, is...

MR. LEDERER: To me or to Mr. Evans.

We are so close right now, I'm not sure who you are looking at.

20 THE WITNESS: To you. Basically...no, Mr. Lederer...it is Lederer, right?

MR. LEDERER: Yes, sir.

THE WITNESS: All I can tell you is in relation to workers' compensation. I had the responsibility for assuring the most competent, effective, fair, equitable evaluation of disability, and that I can answer you very, very clearly, was done at what I perceived the highest level of competency that I can purvey.

25 MR. LEDERER: Well, let me hasten to say, and perhaps this will help Mr. Evans a bit, I'm not for one moment attempting to attack the competency of the people who are operating in this field in Denver.

30 THE WITNESS: I know that.

MR. LEDERER: Apart from anything else, I didn't have any basis for doing that even if I wanted to, and I don't.

My problem is that there seems to me, in the corporate structure if you like, an inherent problem for us as Canadians in that our system is being dealt with and evaluated by people who are...I don't know how far Denver is, but I presume it's a couple of thousand miles away...in another foreign jurisdiction, and that seems to me to be an inherent weakness and I'm wondering whether or not you would agree with me that there is a problem there?

THE WITNESS: A. I submit that it's an inherent weakness, not because you are two thousand miles away, but that intrinsically your system, as I said before, is better than ours. But that would be independent were there a Johns-Manville or not, or a Lederer or a Kotin or not, so that it's just that I like your way better than ours.

Q. I'm not sure that I'm making the point with you, but I presume I made it with the Commission.

My difficulty is, we've got a Canadian system being dealt with and evaluated on both grossly, it seems, in the sense of the way in which Johns-Manville relates to it in the general context, and I presume from what you have said, in relation to individual claims, some considerable distance away, and that seems to me to be impractical at best, and harmful at worst.

A. All I can say is, if indeed people in the world of industrial medicine, both corporate as well as other constituencies, feel as kindly as I do...and I'm not pandering to you or patronizing you at all...you've got a hell of a lot better system than we have, so that basically to the extent that it might not be utilized to the extent that it might be,

A. (cont'd.) I have no trouble with responding to your question.

5 DR. DUPRE: Let me see if I can dissect something here, Mr. Lederer.

MR. LEDERER: Sure.

10 DR. DUPRE: I think that the witness has been very helpful in terms of saying that it's possible that as Canadians we do have problems, and I think he illustrated it fetchingly by saying that, well, you know, it might be perceived on the other side of the border that there would be a problem if the headquarters were at Barrie and the plant was in Denver.

15 But at this point if you would just permit me for a moment, I am, Dr. Kotin, quite interested in the, what I take it is the favorable view that you have taken of the workers' compensation system here, as someone who is familiar with WCB's in a number of North American jurisdictions.

20 In particular, I take it...although you didn't use the exact title...but I think that this would be the particular part of the ACODD operation that you singled out for praise, and that's the advisory committee on occupational chest disease, which as you know is this group of physicians who act, I will say for the moment in terms of the way I think I'm beginning to learn it, who act in the capacity of consulting physicians to the WCB physician who is directly involved with the medical side of claims.

25 I take it that it was that committee that you...

THE WITNESS: Yes. That whole operation.

30 DR. DUPRE: Can I take it from this that one of the things, one of the reasons why you look favorably on this particular part of the WCB operation is that from your standpoint the kind of work that is done there in diagnosing disease and in getting to some kind of an assessment of disability or impairment,

DR. DUPRE: (cont'd.) is such that you feel, whenever these cases have come to your attention...

5 THE WITNESS: Have an opportunity for multi-constituency input. That, again, in a constant way, in a way that is predictable in the sense of the mechanism, not predictable in the sense of how it's going to go one way or another.

10 DR. DUPRE: But were you suggesting here that given the quality of the work as you view it, that is done by the ACOCD, you would be less likely to find claims that would be challengeable because they are based on what would be viewed in your shop as flimsy evidence or deficient diagnosis?

15 THE WITNESS: I don't have the data to answer that, but I would tell you this, that by and large we would in, where we would be involved in a given case, we would find that our concordance level is infinitely better than our discordance level.

20 DR. DUPRE: Now, let me ask you this, because you are familiar with a number of North American jurisdictions, would it be that in any of a number of other jurisdictions one of the problems or one of the things that caused the work in that jurisdiction to pile up in your division, would be that there wasn't a kind of similarly-qualified, constituted group of specialists advising the state of usual workers' compensation...

25 THE WITNESS: I think I can say that no less... on three individual occasions this has been my testimony before the United States Congress.

DR. DUPRE: That testimony being that the Ontario system was a good one, or that some jurisdictions should...

30 THE WITNESS: Oh, yes. Well, the Ontario or the medical panel system in the U.K., or some variation on that which would adapt...I mean, massage it to fit into the U.S. so that the mechanism would be ours, but the principles would be yours.

DR. DUPRE: Okay.

MR. LEDERER: Q. Can I just extend this out a bit?

5 As I understand it, then, all the judgements that are being made with respect to particular claims for Workmen's Compensation, be it from Canada or from some place in the United States, or I presume, although this may be wrong, since you haven't said it yet, from other places in the world, would be made in Denver?

10 THE WITNESS: A. No. I gave a hierarchy this morning. Some would never get to Denver.

Where a person has clearly chronic restrictive disease that leaves no doubt...you would flunk a sophomore medical student...or a junior, I guess, when they get to the clinical area...you would flunk a junior medical student who wouldn't pick it up. That wouldn't come to Denver.

15 Q. Well, you see, that's what leaves me confused. On the one hand you say that those cases would, I guess, remain in Canada, using...

20 A. They might or might not. That's the point I'm trying to make.

Q. Well, if some of them would remain here, as you now say, let me come back to my original question - doesn't it strike you as just a little bit odd that the senior management people here don't know anything about it?

25 I mean, if you said to me, we do them all so there is no need for them to be concerned, I wouldn't be very happy about but I would understand it.

But now you are telling us, as I guess you did this morning, that some of them are handled here.

30 A. I don't know whether specifically any have been handled in Ontario since my last appearance or the appearance before that. I'm giving you the principles of operation.

A. (cont'd.) It may very well...every one may have come to Denver.

5 Q. Given what you have said and keeping it on the level of general principle, because I don't have any...

A. I don't have the data either, so we can't really....

10 Q. Keeping it on that level for the moment, can I just ask you directly, if I haven't already, in the context of this additional fact that some may well be handled here...

A. That's not a fact.

Q. Well, in the policy framework that you have said, there is room for...

15 A. It would be compatible with the policy would be the way to put it.

Q. All right. Doesn't it strike you as a little unusual, in a certain sense perhaps even frightening, that senior officials here apparently don't know anything about this policy framework?

20 A. Well, again, it varies in plants. It may very well be if you ask the employee relations person at this plant or that plant...I can't answer that.

Q. Why can't you answer it?

25 A. Well, basically I would like to go and see what the situation is at the Toronto plant, and ultimately maybe identify a level where it was completely understood and known and all the operations aspects were understood.

I'm not saying that is so because I'm dealing from the base of inquiry as you are.

30 Q. Let's move on and take those cases that find their way to Denver, and I take it from what you are saying they are the more difficult cases, is that a reasonable word?

A. Some. Difficult? I...they are cases that

A. (cont'd.) are referred for a variety of reasons.

5 Q. All right. And those cases for a variety of reasons find their way to Denver from, perhaps from Toronto, other locations in Canada, perhaps other countries of the world?

A. Well, let's leave it to Canada and the U.S.A.

Q. Well, if I have to...

A. It would be irrelevant from...

10 Q. Well, I'm not sure that it is irrelevant, given my next question, so can you tell me, would there be cases from other countries in the world that might find their way to Denver as well?

15 A. Well, no, because basically we have in other countries workers' compensation laws which would almost preclude the necessity for sending it back to us.

Q. I'm sorry. Why would they preclude?

A. I don't know why. But I know that for instance that the workers' compensation laws in West Germany, where we have plants, are entirely different than they are here.

20 Q. Yes? But is it intrinsic...sorry.

A. I have never seen it...in fact, I have never seen a workers' compensation case from West Germany. We might tell them to go to a university. It would vary all over.

25 Q. Is it intrinsic...I am interested in this because there seems to be a distinction now between West Germany and Canada, a Canadian case may find its way to Denver, a German case apparently doesn't.

A. Again, now I think...

Q. If you tell me you don't know the answer to these questions I'm quite happy to have that answer.

30 A. No, no. The answer is that 'I don't know' would carry an implication that you are dealing with a never-never land, which you are not.

5 Q. Well, let me just ask you the question directly. When you say that no cases would find their way from West Germany to Denver, is it intrinsically part of the law or the workmen's compensation program in West Germany that all cases are to be dealt with and decided within the boundaries of that country?

A. I have no idea. It may be that there is no disease there at all.

10 Q. I'm sure that's not the case.

DR. DUPRE: I want to see if I understand the question here in context.

MR. LEDERER: Yes, sir.

15 DR. DUPRE: As I would understand it, any workers' compensation case in Ontario is going to be dealt with by the Ontario WCB.

MR. LEDERER: Yes, sir.

20 DR. DUPRE: So that presumably your questions to Dr. Kotin all have to do with the extent to which a decision by the company to challenge a claim or to appeal a claim would be made in Denver.

MR. LEDERER: Yes.

DR. DUPRE: That's the only kind of decision that you are referring to?

25 MR. LEDERER: It's inherently a corporate decision as opposed to an administrative decision. That's right.

MR. LEDERER: Q. Can you tell us from the perspective of the vice-president, health, safety and environment at Johns-Manville, why it is that some Canadian decisions would be made in Denver, but apparently no West German decisions would be made in Denver?

30 THE WITNESS: A. No, I cannot tell you why.

Q. I beg your pardon?

A. I cannot tell you why.

5 Q. Is there somebody in Johns-Manville who could tell us why?

A. I wouldn't know.

Q. I'm sorry?

A. I wouldn't know.

Q. All right.

10 So, to the extent that...sorry, I'm a bit taken aback by that last answer.

15 A. Well, obviously I'm shaking you off, because basically you are asking a question that is completely irrelevant. I'm delighted to talk to you about Canada and the U.S.A., but the relevance of what my policy is outside of Canada and the U.S.A. is something I fail to understand, so I really don't know how to answer it. The shaking it off is a reflection of inability to comprehend, rather than...if I show anything in a day and a half of testimony, it is not my proclivity to duck hard questions.

20 Q. No. No one is suggesting that. However, you seem to be implying...

A. I can tell you...

25 Q. Just a minute now. I've listened to you explain to me what you think is wrong with my question. Now, let me make a comment, if I might.

30 By saying that you are shaking off the question, you are implying, at least to me, that there may be another answer somewhere. Perhaps since you have contested the relevancy, and I'm frankly not sure that it is your job to do that, let me just explain to the Chairman what I think the relevancy is, and perhaps I can get some help from him as to whether or not it is worth proceeding with this.

One of the concerns of this Commission as I understood it, and one of the reasons why we have seen...I was

5 Q. (cont'd.) going to say a parade, but that may be overstating it, but why we have seen a series of officials from Johns-Manville is the concern of how an international corporation makes decisions within the particular jurisdiction... in this case the jurisdiction of Ontario.

10 Now, it appears from the answers that we have received from Dr. Kotin, that as a practical matter decisions are made about Ontario, in Denver. Yet the same cannot be said for West Germany.

15 I think, given the interests of this Commission in the way in which international corporations operate, it is of complete relevance to find out why it is that this international corporation treats West German cases differently than it does Canadian cases, because I think there may be something important to learn in this area.

DR. MUSTARD: I may be missing something.

MR. LEDERER: Yes, sir?

20 DR. MUSTARD: Presumably what they would do in Denver, with a case from Ontario, is decide whether they might wish to appeal the cases before a Board.

MR. LEDERER: Yes.

25 DR. MUSTARD: I would presume that is the only reason why you would want to do something. But the case which originates here, goes to the Workmen's Compensation Board, as far as I understand it, regardless of what the company wants to do.

MR. LASKIN: That's precisely right.

30 DR. MUSTARD: And therefore I don't think it...the only difference you might really want to be looking at is the question of whether the Germans allow an appeal process, I suppose, because I know nothing about that, but certainly, unless I misunderstand your questioning, I see nothing in the Ontario laws that I am familiar with, that allow Denver to prevent a case going

DR. MUSTARD: (cont'd.) to the Compensation Board. Certainly Denver can make a case to have an appeal on it, or something like that, which may or may not be fair.

Am I missing something in your questioning?

MR. LEDERER: No, I don't think so. I think in fairness to the witness what I should say is...first of all, I think your analysis is correct and I thought we had straightened that out with the Chairman's questions a few minutes ago, but... and if the answer is that there is no appeal process in Germany, then that's the answer.

But failing that answer, it seems to me not irrelevant to find out if there is something within Johns-Manville, as apart from something inherent in the German system, that means that there is no point in even the decision with respect to an appeal being made in Denver.

Now, as I understand...I first of all take the position that it is relevant, which is the question that we are now talking about...it being relevant, it seems to me that I have a right to get an answer from the witness.

Now, if the witness says I don't know of a system in Germany, maybe that's it. Fair enough.

If he says, if he accompanies that by saying, I don't know anything about what Johns-Manville does as a reason behind it, that's fair enough.

I think that much should be on the record, because there may be something. Maybe in Johns-Manville there is a policy that says, you know, West Germans are different for some unspecified reason that I am unable to imagine at the moment.

THE WITNESS: May I make two comments? First of all, I think you are guilty of a tremendous overstatement by generalizing that West Germany is immune to Denver rules and regulations. That's manifestly untrue.

5 THE WITNESS: (cont'd.) We set their standards, we set their work practices, they are guided by what is in our medical manual, so I just...I think I resent the generalization from this.

Secondly, I don't know what the rule in West Germany is, and there is one of the two answers you gave me and I think that that's the answer.

10 DR. DUPRE: Just let me see if I can make sure I understand what is going on myself, by just posing a couple of very simple questions.

15 The first is, Dr. Kotin, that I would be correct in my understanding of a reply you gave to Mr. Lederer a little while back, which is simply to the effect that where the role of your division comes in with respect to the decision of whether or not to appeal WCB claims, or to contest them, you have never had any West German business on your docket, is that correct?

THE WITNESS: Yes.

20 DR. DUPRE: Okay. Now, can I just ask one other question? To your knowledge is this absence of West German business on your docket due to the West German compensation laws?

25 THE WITNESS: I suspect that it's due to the fact that our asbestos operations in West Germany, if we have any asbestos...now I begin to think maybe I have wasted everybody's time...I am beginning to doubt whether we have an asbestos operation in West...we don't? I'm delighted to get some help from the audience.

There is your answer, sir. We have never seen any from West Germany because we don't have an asbestos operation in West Germany.

30 DR. DUPRE: Although more generally speaking I guess the point would be this - your branch would advise on contesting any WCB claims due to health, but not to safety.

DR. DUPRE: (cont'd.) Correct?

5 THE WITNESS: No, he is putting my words in my
mouth again, in your mouth. We don't advise on contesting. We
say that, on the basis of our or our referring physician's
opinion, this person does have an asbestos-related disability.
We do not, and I would not want the responsibility for the
decision on contesting, because there's a whole array of
10 additional factors involved in choosing whether you contest or
not, and since the initial question was from the lofty pinnacle
of being a senior vice-president, and the highest-ranking
person here as that flow chart definitely shows, basically
the role of HS and E as distinguished from me, was to provide
an evaluation, and the response will be that basically this person
15 has an asbestos-related disability, this person does not have
an asbestos-related disability, or we are sufficiently unsure
since we don't have a monopoly on all the knowledge in the world,
that we want to refer him to Dr. Thomas Payne, chief of the
pulmonary division records, or the person, if it's in Toronto...we
have referred people to the pulmonary division of the University
20 of Toronto Medical School for evaluation, and we've done it in
places as well. How often and what percent, I would have no idea.

But basically, it is part of a standard operating
procedure when a case is referred.

25 DR. DUPRE: And of course you are quite right
because as I recall your testimony, the decision as to whether
or not to contest would be made by the WC program which is under
the senior vice-president legal.

THE WITNESS: That or finance, I can't recall.

30 DR. DUPRE: Now at this point that decision to
contest is still offshore, but I'm glad that Dr. Kotin reminded
us all of the organizational chart here.

MR. LASKIN: Can I...and I don't mean to interrupt

5 MR. LASKIN: (cont'd.) Mr. Lederer or anybody else,
but I think possibly in fairness to the witness and so that we
have all the knowledge before us in this room, we should have
regard to what our own researcher said about that issue, and as
I read Mr. Barth, what he essentially said was that in this
province, having reviewed asbestos claims, that employers in almost
every case did not contest claims, and if they in fact did contest
10 claims, it wasn't on the legitimacy of the claim per se, but rather
on which of several employers who might have had asbestos
operations should bear the responsibility vis a vis the Board.

I don't know whether this witness is in a position
to comment on that, but I think in fairness we should have that
information on the table.

15 DR. DUPRE: Mr. Lederer?

MR. LEDERER: Q. When you...you indicated a few...
well, you have indicated firstly that when you...that is your
department...sees a case in which a claim has been made, it is
essentially a medical judgement, I think is the term that you
used earlier, that is made within your department.

20 Then I think you said a few moments ago that
having determined that a person has an asbestos-related disease,
there would be a raft of other factors that might go into a
consideration as to whether or not there should be a contest about
that.

25 THE WITNESS: A. Correct.

Q. Are those raft of other factors, are they dealt
with in Denver or they dealt with somewhere else?

A. I don't have any idea. If it were somebody,
if one of the factors would be multiple employers, again I think
you would have to individualize.

30 Q. All right. What I am interested in knowing,
and I think you are going to tell me you don't know the answer, but

Q. (cont'd.) I think just to see where I was...I beg your pardon?

A. Expose my ignorance - go ahead!

Q. Well, you have just said you don't know. I'm not exposing anything.

What would interest me is, if the ultimate decision is made in Denver, is it made then with any consideration of the larger corporate framework since you have taken the decision and moved it down into Denver where the head office of the international corporation is? Do you understand what I mean?

A. No, I sure don't.

Q. All right. If you make a decision in Toronto, you make it with the Toronto experience in mind. Wouldn't that make sense?

A. Sure.

Q. All right. If you move it down to Denver where the head office is, you would be more inclined to make it with the world experience in mind, wouldn't you?

A. Nonsense.

Q. No?

A. No!

Q. You would still make it with the Toronto experience in mind?

A. I would make it on the basis of what constitutes the criteria for the diagnosis of asbestos-related disability, and geography would be a completely nonessential factor in terms of my acting as a physician, or the plant physician, or the physician we would refer to as a consultant.

Q. I understand that in relation to the medical judgement that you have talked about before. What I am really addressing my mind to are what you have called the raft of other

5 Q. (cont'd.) factors, and I'm asking whether the raft of other factors would be considered in the larger corporate context if they are made in Denver, as opposed to being...

10 A. No. The raft of other factors were all related to medical consideration - what were the raft of other factors, the fact that by and large interstitial fibrosis is caused by a variety of agents, or we have a fellow who worked for an array of corporations where asbestos exposure might come.

I am concerned with the...and again I come back to my morning analogy, as much as it might discomfort you.

15 I am practicing medicine, no differently within the walls of the corporation than I did as a professor at an academic health center or as a private practitioner of medicine. The rubrics were the same.

Q. All right. Do I understand you now to be saying that the raft of other factors all have medical implications as well?

20 A. As they affect us. I have no idea about outside the corporation, outside...

Q. Well, I'm talking about within the corporation. Are there any factors...

A. Oh, then you would have to ask other people. You would have to...

25 Q. Sorry. Let me finish the question. Are there any factors which this corporation might use in making this kind of decision, which do not have direct medical implications?

A. None that I am aware of personally.

Q. Would you be aware of them all, in your position as vice-president of health, safety and environment?

30 A. I assume I would be, but my only factual answer I can give you is, none that I'm aware of.

5 Q. All right. Are there any basic...having discovered an asbestos-related disease, and looking at whether or not a claim should be contested, are there any basic criteria that you would look to in determining whether or not the claim should be contested - for example, multiple is one that you mentioned, or length of employment with Johns-Manville, for example?

10 MR. EVANS: Excuse me, Mr. Chairman. The witness... and this would be a mischaracterization of his testimony, but I think the witness has said that it wasn't his involvement in that position of determining whether or not to contest a claim. I think the question is asking him what the criteria are, and he just said he wasn't in that position.

15 MR. LEDERER: Well, what I'm working up to is, I think there is an example of a potential criteria here which doesn't necessarily apparently fall under this man's bailiwick, and if that's the case I would like to discover if it's simply not considered.

20 DR. DUPRE: Well, now, let me see if I'm following you specifically, counsel, because as I understood your question it was to the following effect: If one of the considerations is the extent to which an employee was in fact employed by J-M, or was exposed to asbestos while working for J-M, correct?

MR. LEDERER: Mmm-Hmmm.

25 DR. DUPRE: Would Dr. Kotin's division be involved.

And I would take it, Dr. Kotin, that insofar as you have the medical records and you have the biostatistics and epidemiology data bank, this is precisely the sort of information that you would be able to provide if a claim came in and somebody was saying now, look, was this guy in fact ever employed by J-M and how long was he exposed. You would be able to answer that in your division?

30

THE WITNESS: Yes, we would have that information.

5 MR. LEDERER: Q. Well, let me try this another way. Perhaps I'm not being clear about it. Let me give you a hypothetical situation, if I can. Let's say that we have a case that is sent to Denver and your people look at it and you discover an asbestos-related disease, okay?

10 Now, in my hypothetical case let's suppose that you go back and check the records which Dr. Dupre has now referred to, and you discover that this man has been exposed to asbestos in the workplace through employment at Johns-Manville for a twenty year period, okay?

On that basis alone, is there any reason that you would contest the claim?

15 THE WITNESS: A. I don't contest the claim.

MR. EVANS: Again, I think that we've gone through this in terms of Dr. Kotin testifying he is not involved in that decision, to contest or not to contest. I think he has already set forth his input and his position in that area. At least on two occasions, as the record will bear out, he has said that he does not make that judgement call.

20 MR. LEDERER: Fair enough. I'm not denying that, but the fact remains that this is the ranking official we are going to get from Johns-Manville, and if anybody knows the answer to these general questions, it's presumably him.

25 I guess what I am asking for is for him to step outside his rather particular role. Now, if he doesn't know the answer, that's fair game, but...

30 DR. DUPRE: Counsel, I think I'm only having trouble with one thing, which is that if I understood your question, I have the feeling in my very simple-minded way that Dr. Kotin has already provided the answer, because as I would understand it, everything that he has been saying to us, we

5 DR. DUPRE: (cont'd.) know what is in his division, what their diagnostic and data capabilities are, and as I take it at the moment, his division can look at the following questions and probably has the capacity in most instances to come up with an answer, those questions being was he employed, how long was he employed, was he employed in an exposure situation and for how long, and what is the quality of the diagnosis.

10 So all of this information, I believe, they have the capacity...in other words, length of exposure, employment and medical diagnosis.

Were you after another area?

15 MR. LEDERER: Yes, no. I thought I was in...I am apparently being incredibly obtuse about this, much more obtuse than usual.

Let me indicate exactly where I was attempting to go and what it was I was attempting to achieve, and if it is not going to be helpful I am happy to forget it.

20 I am not, at the moment, concerned about Dr. Kotin's little cell, if I can use that term. I am concerned about Johns-Manville as a whole, and remembering that he is here as the ranking official.

Now, what he has indicated, as I understand it is, that his department, falling back into the smaller cell for the moment, makes a medical judgement as to whether or not there is asbestos-related disease.

25 That, as has been said, is not a decision to contest. It's merely a decision as to whether or not there is disease, and that factor, along with other factors apparently is considered somewhere else to determine whether or not there should be a contest.

30 Now, what interests me is the consideration of those other factors - where they are, who makes them and whether

MR. LEDERER: (cont'd.) or not there is any set criteria on which they are considered.

5 What I was attempting to do, and not terribly well it seems, is to do it by way of example, and let me just explain how I thought it would work, and if Dr. Kotin can just answer the whole thing at once...

10 DR. DUPRE: Could I just remind you, counsel, at this point that Dr. Kotin has already specified what the somewhere else is. The somewhere else where that decision is made, as I understand it, is the workmen's compensation program which is under the senior vice-president, legal.

15 So at this point your question is really what factors, other than what has been fed in from HS and E, are taken into account by the senior vice-president, legal? Is that it?

MR. LEDERER: All right.

MR. LEDERER: Q. Can you answer that question?

20 THE WITNESS: A. No, I cannot, any more than he can answer what constitutes our criteria for saying the person has an asbestos-related disease or not.

Q. So if we wanted to find the answer to that question, we would have to look somewhere else other than to you?

A. That's correct.

25 MR. LEDERER: I'm sorry, Mr. Chairman. I have obviously wasted a lot of time. That was the answer, and I apologize for the delay.

MR. LEDERER: Q. The Chairman asked you some questions about the dissemination of information to government agencies this morning, and referred specifically to Dr. Finkelstein, and my suspicion is that that's come out of some questions which I asked of Mr. Cashman.

30 Do I understand you to say this morning that Mr. Chase is the holder of the box which was biological in...

A. Dr. Chase, yes.

Q. ...is biologically and epidemio...

A. Biostatistics and epidemiology, right.

Q. Now, did I also understand you to indicate that so far as you were concerned there had been no change in policy with respect to the dissemination of that kind of information?

A. That's my understanding, yes.

Q. When you held the position of senior vice-president for health, safety and environment, was it a requirement that anybody from the United States or Canada, I suppose, from a government agency who wanted that sort of medical record information for study, would have to write directly to Dr. Chase?

A. No, he could have written to me and I could have referred the letter...or my secretary would not even let me see it, but would refer it to Dr. Chase, because it was Dr. Chase's responsibility to do the evaluation in terms of experimental design, program design, protocol evolution and so on.

Q. Was it the corporate policy that in fact somebody had, somebody requesting that information from anywhere in Canada or the United States, would have to write directly to Denver, as opposed to, say, writing from Toronto, from the University of Toronto or from the Ministry of Labour in Toronto, by way of example only, to the plant in Toronto of the head office...

A. No, they could write to the plant in Toronto, but I sure as hell would climb the walls if data were disseminated from any facility without that person in Toronto, or Wakegan or Manville or anywhere else on earth, not clearing with us.

5 MR. LEDERER: Now, I am...Mr. Chairman, I am
in sort of an awkward position and it may be that this whole
question can be answered by Dr. Kotin. My difficulty is that I
have a series of letters...I doubt very much whether Dr. Kotin
has seen them before, and I wouldn't want to suggest for a moment
that he has, but they are the letters which raised that series
of questions, and maybe...I have shown them to Mr. Evans over
the lunch, so that he is aware of them...and we have interpreted
10 them in a certain way which has raised a question, and I would
like to put them to Dr. Kotin despite the fact, in fairness to
him, he has probably not seen them before, and see whether or
not we can resolve this problem one way or the other.

15 MR. EVANS: The only comment I have, Mr. Chairman,
is again, it's what I've stated earlier. I can understand
the Commission is interested in determining how a corporation
such as Johns-Manville makes determinations with respect to
dissemination of medical data, be it to private or public
officials, and I certainly would want to assist the Commission to
pursue that inquiry.

20 On the other hand, I am concerned that if we bring
this down to cases, so to speak, by using Dr. Finkelstein as
a particular example, then my only concern is that the questioning
not be reduced to the level where we are saying 'why didn't Dr.
Finkelstein get these records'. That's what I'm trying to avoid.

25 I raise this concern because I am at a loss, and
trust that Mr. Lederer is a little more astute than me, because
I am not sure how I could use those documents without bringing
those questions to that particular level.

30 MR. LEDERER: Well, I am, sad to say, if that's
the test I am being put to, I am not more astute than Mr. Evans.
I think those questions need to be put, but I hasten to add that
they are put by way of example. They are not put to make a
particular point.

DR. DUPRE: Now, before I huddle with my colleagues here for a moment, I at least want to make sure I understand one thing.

5 Those letters that you wish to introduce at this time involve correspondence between an official of the government of Ontario and the Johns-Manville Corporation?

MR. LEDERER: Well, yes. The majority of them are to a representative of that corporation in Toronto, and then in the end there is...

10 DR. DUPRE: I just want to ask what kind of letters we are looking at here.

MR. LEDERER: Yes, that's right. That's right.

15 DR. DUPRE: Okay. Mr. Lederer, the Commission thinks that it is quite in order for you to introduce those letters, and indeed the matter of whether or not we are just looking at this by way of example is, at this moment, not something the Commission deems is terribly material, the fact there, Mr. Evans, simply being that we do have here, presumably, a case in point, or a case study if you will, that involves an official of this government who in the pursuit of

20 his work has been contacting the corporation for assistance.
MR. EVANS: May I speak with the witness, Mr. Chairman, prior to going ahead with this?

DR. DUPRE: Well, indeed. May I take it that Dr. Kotin has not even seen those letters at this point?

25 MR. LEDERER: No, he has not. I have shown them to Mr. Evans, but I have not shown them to Dr. Kotin.

DR. DUPRE: Well, perhaps it would make sense to break for ten minutes so that (a) you can speak to Dr. Kotin, (b) Dr. Kotin can see Mr. Lederer's letters and then we'll see if we can maybe have the odd copy.

30 THE INQUIRY RECESSED

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THE INQUIRY RESUMED

5 DR. DUPRE: Are we ready?

Counsel, you may now introduce those letters to which you refer.

10 MR. LEDERER: Mr. Chairman, Mr. Evans and I have had a discussion over the break about these questions, and I think before I even attempt to put the letters in I should let him comment on the questions, and I have something to say following his comment, and I have discussed it with Mr. Laskin so he is aware of what...

DR. DUPRE: Very well.

Mr. Evans, please?

15 MR. EVANS: Yes, Mr. Chairman, thank you.

20 As Mr. Lederer and I have discussed, there is a concern, which I have conveyed to him, that the questions ultimately are of an evolutionary nature leading into an area which I am concerned that Dr. Kotin will be required to answer, and namely it relates back to what I stated originally with regard to using a particular example involving Dr. Finkelstein as a takeoff point upon which to explore the general principle which we have been pursuing, namely the dissemination of medical data by Johns-Manville to the public and private sector.

25 While I endorse the Commission's pursuit of that general principle, I again am very much concerned that we pursue that principle in the context of a particular example, an example that I might add is not one that existed in the past, but is, if I may use the word, a controversy, for lack of a better term, existing right now.

30 I am not anxious to resolve that controversy, or even make that controversy a matter of public record, right now, given the fact that it's a private matter between Dr.

MR. EVANS: (cont'd.) Finkelstein and Johns-Manville, and the department or division for which he works, which is still under investigation and is still pending.

For that reason I don't want to get into the nuts and bolts of that particular case at this Commission Inquiry today.

Regrettably, it's a convenient example and I can understand why Mr. Lederer wishes to use it, especially since we don't have any other examples in the past that are already dead issues, from which we could pursue the inquiry, but we don't. We are stuck with the facts as we have them.

And that is my concern as I have expressed it.

DR. DUPRE: Thank you, Mr. Evans.

Mr. Lederer?

MR. LEDERER: What Mr. Evans I don't think said, or what he said to me when we talked about it is, that he wasn't going to allow Dr. Kotin to answer any questions with respect to those letters.

If that is the case, well...let me make a couple of comments.

Firstly, Mr. Evans has said it's a private matter between Dr. Finkelstein and the company. As far as I am concerned, it's not a private matter. It's a rather public matter because it involves a public institution, being the Province of Ontario and more particularly the Ministry of Labour, it just so happens that it focusses in on Dr. Finkelstein who is a representative of that ministry and of that government.

It is an example, as Mr. Evans says, but that's the only way you test policy, is by example. Without reference to example, there is no way of knowing whether or not the stated policy works and how in fact it does work in practice, so that the objection to it as an example seems to me to be ill-founded.

Having said that...well, one other thing. Mr.

5 MR. LEDERER: (cont'd.) Evans also says that there are no other examples in history. I don't know what there is in history. This just happens to be the example that I am aware of, and for all I know there are others - there may be none, I don't know, there could be anything between those two extremes.

10 Having said that, though, I confess for a slightly different reason that I'm nervous about raising the whole thing, as a lawyer, anyway because it offends my experience as a lawyer to put to a witness letters that he can't possibly know about.

15 For that reason, I am not inclined to allow this... well, 'allow it' suggests that I have some control it...I would not want to see this increase into an overblown dispute, because, as I say, I have an inherent concern about it anyway.

20 My reason for...that's the reason why I was so careful to refer to the letters in advance of asking any questions about them.

25 My reason for doing it, and I have explained this to Mr. Evans, is that we have a series of letters, as I think is clear with respect to the questions I asked Mr. Cashman, we have a particular interpretation that we have placed on them.

30 I detected in something that Dr. Kotin said an explanation which may render the letters entirely consistent with the policy, and I had hoped that we could put to rest the controversy through those questions, and that was the reason for raising them.

35 If Dr. Kotin isn't...upon instruction of counsel... not able to resolve the problem, well then there is probably no point in pressing it, for whatever reason.

40 That's a very rambling comment and I apologize for that.

DR. DUPRE: Counsel, do you have any...?

MR. LASKIN: Well, the only advice I can offer is,

5 MR. LASKIN: (cont'd.) I mean it seems to me that the letters can clearly go in . I mean, they are always subject to proof, I suppose, but Dr. Finkelstein is here and at some stage he can verify that he sent certain letters and received other letters, so I don't see any real problem in putting the letters in.

10 As for whether Dr. Kotin is aware of them or not, there is obviously a simple yes or no answer to that question. If he is not aware of them, that's the end of it insofar as that part of it is concerned, and I suppose the only other question is to put to him, well, 'at a certain period in time this request was channelled through Denver, is that consistent with the policy you articulated, and in prior time it appears the request was dealt with in Toronto. Now, do you have any explanation as to why that appears to be at odds with the policy articulated', and I would have thought that is the end of the matter.

15 MR. LEDERER: Well, that's the first stage. There is a second stage which is that there have been requests for information towards the end of this, which haven't been responded to yet, and there may be questions as to whether or not there is any explanation as to why that's the case.

20 MR. EVANS: Mr. Chairman, if I might add, if the inquiry goes no further than what has been stated by Mr. Laskin, then I'm not sure that I have problems with it.

25 But as I explained earlier, and Mr. Lederer simply intimated a second ago, there is an evolutionary process to these questions, and as documents are wont to do in the hands of attorneys, it seems that questions go one step beyond square one.

30 But if it is confined to the inquiry that Mr. Laskin raised, I have no objection. That inquiry, as I understand it to be, does Dr. Kotin know of the letters, has he seen them

MR. EVANS: (cont'd.) before, and I submit that we go forth on that proposition only.

5 But beyond that, getting into phase two that I have expressed concern about and Mr. Lederer has referred to, namely the nuts and bolts of it, that's where I am going to raise an objection.

DR. DUPRE: Well, now, counsel, you, like anyone else, are free to raise objections.

10 Let me suggest that at this juncture that nobody can tell in advance the evolutionary process that any line of questioning is ever going to wind up taking, so might I ask, please, at this point, step one, that Mr. Lederer, you kindly introduce those letters so they can be given a number, then start posing questions and we'll see just where we go from here.

15 MR. LASKIN: Seventy-five for our records.

DR. DUPRE: Seventy-five? Thank you.

EXHIBIT # 75: The abovementioned documents were then produced and marked.

20 DR. DUPRE: Do you want to give us a little time to read these before you ask the questions?

MR. LEDERER: That might be advisable. There may be questions which you see in them which I don't see.

25 I'm not sure that Dr. Kotin, because of the discussion we had had, has had an opportunity to look at them either.

30 I may say, Mr. Chairman, that you will see that there are one or two in here...I wasn't aware that these would be copies...there are one or two in here which do not involve Johns-Manville at all, they are rather internal, but they go to explain the situation. I certainly wouldn't refer to those in particular, because that would be grossly unfair.

DR. DUPRE: Are you suggesting, counsel, that we

DR. DUPRE: (cont'd.) remove certain of these letters?

MR. LEDERER: Well, I would be happy...

DR. DUPRE: By inadvertence they are not material to what you are...would you please tell us at this juncture which letters we should remove, so that I can rule as to whether or not it is appropriate to...

MR. LEDERER: I think it would be unfair for this witness to have anything asked of him with respect to the first letter that you see, the one dated February 3, 1981.

DR. DUPRE: Any others?

MR. LEDERER: Yes, the second letter.

DR. DUPRE: August 12, 1981?

MR. LEDERER: Yes.

DR. DUPRE: Yes, thank you.

MR. LEDERER: The third, the fourth...actually what you have here is two packages, and the first package, which is the first four letters should not have been copied. The second, which begins October 13, 1978, are the ones that are germane.

DR. DUPRE: Now, you are stipulating that these first four documents are there by inadvertence and they are in no way material to the line of questioning you wish to open up, is that correct?

MR. LEDERER: Well, I don't want to say they are not material. What I want to say is that they don't involve Johns-Manville directly.

DR. DUPRE: They do not involve the witness at this time, and they do not involve the line of questioning you had wished to pursue?

MR. LEDERER: That's right.

DR. DUPRE: I'm going to rule at this time that the first four letters in this package be removed, that they... all of them be resubmitted to Miss Kahn and that they do not be

5 DR. DUPRE: (cont'd.) deemed to be part of
exhibit seventy-five for the purpose of the testimony we are
about to hear.

MR. LEDERER: Thank you. I appreciate your
allowing me to overcome that personal embarrassment.

10 DR. DUPRE: Indeed, rather than having given them
to Miss Kahn, counsel, I think they should be submitted directly
to you for the time being.

Now we can begin our reading of October 13, 1978?

15 MR. LEDERER: Well, could I have a moment to
confer with Mr. Laskin? I'm sorry. He raises a point...

DR. DUPRE: Yes.

15 MR. LEDERER: I think in fairness, Mr. Chairman,
I don't want to do anything that is going to put anybody into
trouble, and I think if you go through it you will see a
document dated April 20th, and I think in fairness to everybody
that should probably be excluded as well.

20 DR. DUPRE: I think the key point, and I haven't
read any of this stuff yet and maybe I'll never get around to
it the way we are going, but I would say that the key point here
as far as the Commission is concerned, you mentioned something
that has to do with April 20th, and I haven't even found it...
the key point would be whether that thing is in there by
inadvertence, as I take it you stipulated the first four letters
to be, or whether if it's in there and there is some discomfort
25 because it might possibly cause some trouble, you know, once
the cat is out of the bag I think the Commission has to reach
its own conclusion as to whether something is material or not.

30 MR. LEDERER: Mr. Chairman, let me put it to you
in this way. I certainly don't, and I checked with Mr. Evans -
he doesn't object to your reading it...you may decide you don't
to put any weight on it, but certainly I wouldn't want it to be

MR. LEDERER: (cont'd.) suggested that there is some...

5 DR. DUPRE: Oh, well, we'll always decide how much weight to give anything, including nothing, but I take it that other...

MR. LEDERER: In those circumstances, may I leave you with the package...

10 DR. DUPRE: I take it that what is in here is exhibit seventy-five, once and for all, and may I now ask for a couple of minutes to peruse this material?

MR. LEDERER: Please.

(REPORTER'S NOTE: At this point the documents were perused.)

15 DR. DUPRE: Proceed, counsel.

MR. LEDERER: Q. Now, first of all, Dr. Kotin, have you in fact ever seen any of these documents before?

THE WITNESS: A. No.

Q. I beg your pardon?

A. No.

20 Q. What I would like to attempt to do is attempt to run through them with you and just explain the way we understand them, and then ask you to accept that, I guess, as a hypothetical and see whether there is an explanation for it that falls within the policy framework that you have outlined, and we'll just see how far we can take it before we get into a
25 situation that you are uncomfortable with.

30 THE WITNESS: Mr. Chairman, may I make a comment? I am uncomfortable now. I think I can best say that...this is Paul Kotin speaking...I will answer no questions relating to l'affaire Finkelstein. The most recent letter is June 8, 1982. Neither the Canadian nor the American mail service have anything resembling three star ratings in terms of delivery, and even if

5 THE WITNESS: (cont'd.) it were delivered the next day, I don't think it unreasonable that on June 29th a letter mailed June 8th is not answered. I have letters to the Commission, and I apologize, that have multiples of this time before getting an anticipated response and so on, so that I am not

MR. LEDERER: Well...

10 THE WITNESS: ...let me, please, finish.

My refusing to answer is in no way to be interpreted as either minimizing the issue, declaring the attitude...I don't want to be considered to be cavalier, but on such...on the basis of this evidence alone there are no ways that I think I can do any justice to the issue, and most importantly, 15 to me.

So I am not...and maybe my attorney may be cursing me, as I say this, but I am not going to answer any questions in relation to this.

I apologize, sir. I think it's the first time in twenty-five years of testimony I've ever said that, as well.

20 MR. LEDERER: Well, I have already indicated some personal discomfort with all of this anyway, but I would nonetheless like to put the scenario to Dr. Kotin. If he doesn't want to answer it, that's fine, but at least it will put to the Commission our understanding of the scenario, and if we can't take it any further than that, I guess that's as 25 far as we can take it.

MR. LEDERER: Q. It appears to us, Dr, Kotin, from reading this material and looking firstly at the memo dated October 13, 1978, which would be on the front, that on October 12, 1978, there was a meeting at the Canadian 30 Johns-Manville location at Port Union, and at that time a representative of that company, the employee relations manager

Q. (cont'd.) Mr. R.W. Wilson, indicated his company's willingness to co-operate in a ministry study.

5 It then appears to us that, looking first of all at the letter of October 10, 1980, that there were letters to, a letter to Mrs. W. Foster, supervisor, employee relations, Johns-Manville Canada on Lawrence Avenue East in Toronto, requesting some information with respect to that study, and it appears to us, looking at the letter of December 22, 1980, that Mrs. Foster 10 had already delivered that information without further request or without further reference to anybody else, and you have a letter of gratitude dated December 22, 1980.

15 It then appears to us that if you look at the letter of February 26, 1981, that Mrs. Foster was requested for further information, that on March 25, 1981, she responded saying that "the job is planned for completion in May", which we understand to mean the pulling together of the information that was requested, that there were further requests on October 21, 1981, On March 8, 1982, and that...and this is really the crux of it...that on March 10, 1982, we were told that in 20 order to get the information we would have to write to Gerry Chase, Manville Corporation, Ken-Caryl Ranch, Post Office Box 5108.

25 So to go back, it appears to us that originally we could get the information directly from Toronto, from Mrs. Foster, because there is no reference to any need to refer the matter anywhere else, whereas now in 1982, we have to write directly to Manville Corporation in Denver, Colorado.

30 The question that I wanted to ask you, and I guess I'm not going to get an answer to, is whether or not (1) you would accept that interpretation of these documents as being a reasonable one, and if you could go that far, is there any explanation for it within the corporate policy of Johns-Manville?

In other words, can it be explained in a way

5 Q. (cont'd.) that would demonstrate that there was no change in policy, or alternatively, if there was a change could we have that explained to us.

That really was the substance of the first part of what I wanted to do, and I think is consistent with taking it as far as Mr. Laskin wanted to take it.

10 Now, are you prepared to respond to those two questions?

15 MR. EVANS: Excuse me, Mr. Chairman. I would like to interrupt at this point in time.

I would like to state for the record I'm sure we are all sorry that given this witness's limited time here that we are spending it on this point. Nonetheless, I will again restate my objection now that the time has come, that forcing Dr, Kotin to justify a position that Johns-Manville has taken is not a proper subject. He is not on trial and he should not have to be put in the position of explaining perceived problems away.

20 It's a matter in controversy at the moment, and I don't think it's proper that it be brought out on public and I'll again restate the fact that Dr. Kotin is perfectly willing to be asked, as he has been asked prior to this hour, the Johns-Manville policy on the dissemination of records. He has explained, number one, that all such records are accessible by the employees and releasable by every employee, and two, explained
25 that Johns-Manville has worked with any number of governmental and private sector organizations in the pursuit of health research, and has listed some of the criteria by which such judgement calls are made.

30 Again, I have no objection to repetetive line of questioning in that area of Johns-Manville policy, but I will object to bringing it down to particular case involving Dr. Finkelstein, which matter is unresolved, and on the basis of

MR. EVANS: (cont'd.) that objection will so stand and await the Commission's ruling before further comment.

5 DR. DUPRE: Mr. Evans, the Commission finds your point well taken, but I will say at this juncture, not least in the light of the fact that Dr. Kotin has himself stipulated that at this time he does not care to answer questions about these letters, I do, however, wish to pose Dr. Kotin a question which has nothing to do with these letters, but which simply
10 has to do with refreshing my memory as to his testimony long before these came up, concerning the J-M policy.

THE WITNESS: I would be delighted to, thank you, sir.

15 DR. DUPRE: Dr. Kotin, did I take it, and I remember this because I think you put it in very strong terms, do I take it that the corporate policy with respect to medical records is...and I think I am almost recalling your own words... that the plant could be in Warsaw, in Leige, in Scarborough, wherever, medical records of employees who have been employed in such plants are not to be released without the authorization
20 of the HS and E decision?

THE WITNESS: Yes. They are not to be released without the authorization of an HS and E decision which carries with it the mandatory release in response to a request by the worker himself for the record for his use or to his appropriate designate.

25 DR. DUPRE: All right. But beyond that they are not to be released without a decision from HS and E, whether it's to a university, a government agency, what have you, correct?

THE WITNESS: If it's a health record, yes, sir.

30 DR. DUPRE: Okay. But I am quite prepared now to leave these letters, counsel, although I will offer the following observation from the chair, since you have introduced these and I have read them, and that much has been done. I can only say,

5 DR. DUPRE: (cont'd.) having heard Dr. Kotin, having had him reconfirm the policy, that it appears reasonable to me as someone who has read the letter that is dated March 10, 1982, that the signatory to that letter, Mrs. Foster, is reporting a corporate policy that is exactly in line with the policy that Dr. Kotin has confirmed, first articulated and then reconfirmed.

10 MR. LEDERER: I'm sorry, Mr. Chairman, if I have been misunderstood. My only...I had never intended when I came here today to raise this issue, and the only reason I did it is because I thought it was a way of coming to grips with the problem, and I think that...had there been an answer, I anticipated that that would be the first part of it, and frankly that the second part would be to assist us in explaining how it is that the original request was responded to without the need to go to Denver, and I presume that there is a logical explanation for that, and having that before us we would have resolved the difficulty.

15 My only reason for raising it was not to put Dr. Kotin in a difficult position. On the contrary, to attempt to resolve the problem as quickly and simply as possible.

20 I wonder if I might make a brief comment with respect to your question, just so that we are clear on what we are being asked for?

25 You have asked whether or not this has anything to do with respect to the policy on medical records, and I am informed that we are not requesting, or the request here isn't for medical records. Rather what we are seeking is information which would allow us to identify the individuals who have worked at the plant, the jobs they have done and to seek some information concerning the occurrence of death in pensioners so that we can investigate for compensation purposes those interests. But it's not the medical records per se and the

MR. LEDERER: (cont'd.) confidentiality problems which that, of course, would create. There's a misunderstanding there. I apologize. It's strictly my fault.

DR. DUPRE: Again, just to make sure that I understand it, but Dr. Kotin will confirm my understanding or otherwise, I understand that what he articulated as the corporate policy, that records pertaining to employees will not be released to governmental or educational or other agencies, save on the authorization of his division, applies to these records in terms of anything that pertains to that individual that would be in the data bank that they keep in biostatistics and epidemiology, is that it?

THE WITNESS: Correct, sir.

MR. EVANS: Mr. Chairman, the one thing maybe I'm confused on now is, and perhaps the Commission as well, and maybe Dr. Kotin can best clarify it for us, is perhaps the Commission is under the impression - and perhaps rightfully so, and only Dr. Kotin can answer the question for us - that impression being that records will only be released upon the consent of the health, safety and environment department.

I'm concerned that that may be a misimpression and the question I put to Dr. Kotin, even though I'm out of turn, is that I understood from his prior evidence that the employee could request his own records to be released, or conceivably the entire plant population employed could request the records to be released, and as Dr. Kotin just said, they would so be released to the appropriate designate, to use his words.

THE WITNESS: That is the case.

DR. DUPRE: Now, did I understand, though, that the appropriate designate would be only a physician who would need them for the purpose of medical practice, or to a compensation board...

THE WITNESS: That's right.

DR. DUPRE: ..as distinct from research?

5 THE WITNESS: That's why I used the term health professional, yes.

DR. DUPRE: Right.

THE WITNESS: In that sense, yes.

10 DR. DUPRE: In other words, the HS and E would still reserve the right to decide whether to release this information, or some of this information, to a researcher for research purposes as distinct from health purposes, whether or not that researcher happened to be an MD or anything else?

THE WITNESS: As I indicated, we have done that already. Historically that has been done.

15 MR. EVANS? I guess still what causes me some concern is the implication being from your question...or let me, if I might, put the question directly to Dr. Kotin.

20 Is it possible for workers to request their records to be released to anybody, and would the company so comply, even if that anybody would be a health research organization? Could a worker so funnel his records to that organization by that request?

25 THE WITNESS: Individual workers could. If it was a health research organization, if it was in the area of health, and there you begin to define what they are...and that's why I use the term health professional, so as not to limit it exclusively to an MD, for instance. Yes, the worker could do that.

Alternatively, there would be instances where the worker would ask for release of his record to nonhealth professionals, at which time we would refuse.

MR. EVANS: Please excuse my butting in, so to speak.

30 DR. DUPRE: I think I only have one other question in this area, Dr. Kotin.

DR. DUPRE: (cont'd.) The policy that you have articulated, I think very clearly for the record, is a policy that has been in place for some time?

THE WITNESS: Yes, sir.

DR. DUPRE: It has been in place throughout the time, basically, that you were vice-president?

THE WITNESS: That's all I can speak to firsthand, yes.

DR. DUPRE: Thank you very much.

Any further questions, counsel?

MR. LEDERER: No, thank you, Mr. Chairman.

DR. DUPRE: Mr. Starkman? Miss Jolley?

Mr. Starkman?

MR. STARKMAN: Thank you, Mr. Chairman.

CROSS-EXAMINATION BY MR. STARKMAN

Q. I would like to deal with an entirely unrelated matter to what we have been discussing for the last hour.

THE WITNESS: Mr. Chairman, may I ask a question?

Just for my own edification, I know I asked you this last time, I can remember, just where are you coming from?

MR. STARKMAN: Yes, I am representing...

DR. DUPRE: Mr. Starkman is the counsel for the Asbestos Victims of Ontario.

THE WITNESS: Okay, thank you. I just wanted to be sure.

If you may recall, I asked you the same thing last time.

MR. STARKMAN: Yes, I do recall that.

DR. DUPRE: I might say, Dr. Kotin, that that is the one group that this Commission has provided some funding to for the sake of enabling them to have counsel and to make

DR. DUPRE: (cont'd.) representations before
this Commission.

5 THE WITNESS: Oh, fine.

MR. STARKMAN: Q. Dr. Kotin, at the head offices
in Denver, how many medical doctors would you estimate there are
in the health, safety and environment department?

THE WITNESS: A. At the world headquarters itself?

Q. Yes.

10 A. There was...when I was there, there were three,
two who were full-time - Dr. Paul and myself - a consultant,
Dr. Wright, who was there half-time. Then there were...we used
as a stringer facility, I guess, the Littleton Clinic which was
a clinic close to the world headquarters, for the providing of
15 the clinical...one additional clinical resource.

Q. I understand that it was a normal practice
that a manufacturing facility or a mine would have a nurse on the
site, and perhaps a doctor on a retainer basis?

A. Or full-time, or on even a fee-for-service
basis. Yes.

20 Q. What I would like to ask you about is, and I
know you have done some writing in the role of a corporate medical
officer, but what I'm concerned about is whether you would see a
conflict between a medical officer's responsibility to their
patient and their responsibility to their employer?

25 A. Well, if I may interpret one word, interpolate
one word - are the seeds for a potential conflict there? Yes.

Need there be a conflict? No.

I would submit that...not that my practice of
corporate medicine was pristine...but I would submit there was
no conflict there.

30 Q. How is one...I mean, I would be interested if
you would go on. If the seeds of a conflict are there, but you

5 Q. (cont'd.) don't feel that in fact there is a conflict, necessarily is a conflict, how are those two ideas reconciled?

10 A. Oh, very, very nicely, because of the fact that basically, and I refer to what I said this morning, my relationship to the patient was no different than it was when I was getting out of debt, after military and private practice of medicine, or when I was an attending physician at Los Angeles County Hospital while a professor at the University of Southern California School of Medicine.

15 The handling of the...medical judgement, as one would learn in a medical school...but, see, the clinical philosophy, the clinical judgement, the actual body of medical knowledge that one gets in preparation for the practice of medicine is really...it is neither geographical or constituency.

The same eyes as a pathologist or an internist, the same stethoscope, would reveal the same thing.

20 Now, I guess where I am concerned is where in your question is, is there a time when the corporate input, as distinguished from the patient's medical input, would the former, the corporate take precedence over the medical.

25 Q. I think my concern is, as you discussed earlier, when you were examining a patient who has a potential respiratory problem, of five doctors there could be substantial disagreement as to whether or not they had a respiratory problem and the extent of the respiratory problem, and that when you get into that type of analysis, yes, I believe each doctor is trying to make a decision based upon what they are seeing.

30 But I fear that when you are trying to make those types of difficult decisions, their judgement may be influenced by their employment relationship, by the existence

Q. (cont'd.) of an employment relationship.

A. All I can tell you is...here I have to speak personally, and this is what you are asking me for...

Q. Yes.

A. ...my brand of medicine is in the field of pathology. I, indeed, have looked at the pathological material from many, many, many dozens and perhaps, as the years go by, I tend to forget, hundreds of slides or pathological material where the diagnosis is dependent upon my professional skills. I don't think I have been influenced by it.

Now, what I think is again a second-order issue, the first-order issue is that in most instances the mere fact that I have seen them doesn't necessarily mean that they are part of a controversial situation.

But in those instances where they might be, there have been other fellow professionals who have looked at them.

I would submit that the standard error, if there were a bias associated with my having a Johns-Manville-shaped cheque, would not be what it is, which is virtually close to zero.

My peers have been the Jimminy Cricket on my shoulder, if nothing else.

Now, I like to think that since I practice medicine that way...no, I don't think I can go further than that. I don't think that in eight years I have been called wrong on a pathological diagnosis. There have been areas where judgement comes in, and I guess that's what you are asking.

Q. Yes.

A. That really represents a small percentage.

I like to think that I administer medicine no differently than I practice medicine, and I would like to think that by and large what emanates from the corporate medical program is measurable in tangible ways.

A. (cont'd.) What are the tangible ways?

5 First, there is a medical manual that is ...black on white, I was going to say...it is brown on white, which clearly states what constitutes the generally-accepted benchmarks for interference with pulmonary function.

We don't have to worry about x-rays, because the International Labour Organization has set up the guidelines for classifying disease, at least using the ILO classification.

10 Well, I think I have answered your question, that speaking very, very personally...and perhaps again I can give you the telephone number so you know I'm not pulling it out of the blue...more eloquent than anything I could say would be the two or three people who really are in a position to monitor the effectiveness of the Manville program and Paul Kotin as a
15 physician.

I would submit that you could go to Dr. Pollikoff, to Dr. Selikoff, to Dr. Kilburn...just three is enough...neither of whom have any notorious credentials for being friendly to either the...let's state it positively - each of whom feels that
20 they are committed, as I am convinced they are, to the same motivation that I am.

This isn't an aggrandizement of Paul Kotin, but they are three harsh critics I have just named, whose names are as familiar to you as my name is to you.

25 So I think I can say, marshalling all the evidence that I can, that Kotin as a corollary of Kotin's position, Kotin's medical program, was not influenced.

30 Q. Yes. My question wasn't really directed at your personal performance, if I can put it that way, but just in general from a structural point of view. I think that it seemed to me that there is the potential for conflict.

A. Oh, I would say it's a very, very active

A. (cont'd.) subject.

In fact..

5 Q. Well, I've got something that...I understand there is an organization called the American Occupational Medical Association...

A. Correct.

Q. ...who has a code of ethical conduct for physicians practicing occupational medicine.

10 A. Correct.

Q. I guess that that code is designed to minimize this potential conflict between employment relationship and physician relationship?

A. Yes, correct.

15 Q. In terms of the hiring of physicians at Johns-Manville facilities, is there a policy from head office which addresses itself to these types of questions?

20 A. The first policy issue is competence. That is the qualifications of the person as a physician, and since you can't give them an examination you use the same qualifications that the Province of Ontario uses in hiring a physician...or maybe they do have civil service exams...I tend to doubt it, those have gone by the board...so you look and see that a person has graduated a reputable medical school, his resume or curriculum vitae indicates that he hasn't indeed had his licence withdrawn for taking drugs, or he hasn't been guilty of malpractice...I
25 don't mean to make it a res ipso ad absurdum, but basically yes, to the extent that one can, and does one always have his predictions come out right? I know I don't.

Q. Other than those sort of, what I would call common sense approach, is there any...

30 A. We don't do any...no, we do no political screening, if this is what you mean...I mean constituency-based

A. (cont'd.) bias pro or against, unless I misunderstand your question.

5 In other words, we don't ask 'are you a member of at one extreme, the Liberty League, and at the other extreme'... because I guess if that were the case, you know, as an ACU'r and an ABA'r, I wonder if that question...never mind.

Q. The short answer is there is no policy?

10 A. There is a policy. The policy is the qualifications of the man.

Q. Okay. But besides that, there is no other criteria?

A. No, and I can't conceive of any that one would want.

15 DR. DUPRE: Can I just ask a question at this point, Mr. Starkman? You referred to a code of ethics of a particular organization which obviously Dr. Kotin was most familiar with. It's the what, again?

MR. STARKMAN: Well, I have...

20 THE WITNESS: It's the American Occupational Medical Association, and this is a group of physicians who are engaged in the professional practice of occupational medicine, and the board of directors has promulgated and approved by the membership a code of ethics, which was published in the Journal of Occupational Medicine - I think it was in 1980...

25 MR. STARKMAN: Yes. I have a copy. It's only two pages. I would be happy to provide it to the Commission.

THE WITNESS: Yes. It was published in the JOM in 1980, I would guess.

MR. STARKMAN: Yes. November, 1980.

DR. DUPRE: Are you a member of that organization?

30 THE WITNESS: Yes, sir.

DR. DUPRE: Would it be a fair generalization that most corporate medical officers probably as a matter of course are

DR. DUPRE: (cont'd.) members of that organization?

5 THE WITNESS: This would have been a fair
generalization until very recently, at which time, now that
organized labour is beginning to accure unto itself the labour
medical officer, the analogue of the corporate medical officer...
in fact, the current issue will show that Dr. Silverstein, the
medical director of the Automobile Workers Union, has gone on
the editorial board of JOM - the Journal of Occupational Medicine.

10 So I guess what I'm trying to say is, it isn't
corporate medical directors alone. It is people in the private
practice, in the academic practice of occupational medicine...the
professor of occupational medicine at the University of Toronto
would, I would bet...

15 DR. DUPRE: So this is basically a society to
which an increasing number of individuals who are involved in
occupational medicine belong?

THE WITNESS: Yes, sir.

DR. DUPRE: It's not a specialty designation
society? You don't have to take an exam to be...

20 THE WITNESS: Not for this society, but there is
a specialty designation in the field of occupational medicine.
It's a subspecialty of the American Board of Preventive Medicine,
and then you get your specialty in...

DR. DUPRE: But that is not to be confused with
this organization?

25 THE WITNESS: No. This organization, the primary
qualifications for JOM is their ability to pay the dues, and that's
good because it's an organization predicated on inclusion rather
exclusion, as some other organizations are.

DR. DUPRE: Thank you, Mr. Starkman.

30 MR. STARKMAN: I wanted to ask your comments on
some documents which were put into evidence by Mr. Cashman.

THE WITNESS: Sure.

Q. It was last week, I guess, in his testimony.

5 I think the first one is...this is exhibit sixty-five, and the first one is from the chairman of the board and it's called an asbestos policy.

I realize that you probably wouldn't have...would you have had input into the development of this policy?

10 A. Yes, sir.

Q. Prior to this policy, it says at the top where it says 'cancels - new', was there a policy that preceded this one, in any form?

15 A. Yes, there was a policy that was on pink paper, as I recall it, or something, that was a booklet, so as to make it stark and be recognized immediately. There was an asbestos policy before this one, but it was not issued under the chairman of the board bulletin letterhead, therefore the designation 'new' here. But it was not new from the point of view of J-M.

20 Q. The one we are looking at, does it represent a significant change from what the policy was before?

A. Not really, no.

Q. Who would receive this type of...are you aware of who would receive a bulletin such as this, or...the chairman of the board's bulletin?

25 A. As you can see, the flow of numbers on page two, which would just about...I think those are codes for everybody in the corporation. I can't be sure, but virtually everybody.

Q. Would the employees receive this bulletin?

A. I can't be sure.

30 Q. So when you say everyone in the corporation, you are referring to...?

A. Management.

Q. Management in the corporation?

5

A. That's correct. I am not saying the employees would not receive it, you understand, but I can't say what I don't know.

Q. Do you know if there is a number that represents 'to all employees'?

10

A. There is a series...even if something is going to all employees, so as to identify facility, the numbers have a meaning. The real breakdown of this one-fifty, two-fifty, three-fifty, blah, blah, blah, I don't know.

Q. Does Johns-Manville have a policy concerning the types of information that should be provided to asbestos workers at the time of hiring?

15

A. Yes, sir. We have not only a policy, but a series of booklets and brochures and pamphlets which are given to the employee.

The name of it tells you what it is: It begins, So You are Going to Work with Asbestos, or some variation on that title.

20

Q. Referring to this?

A. What is the title of it?

Q. It's exhibit number...it begins: There are Some Things You Should Know?

25

A. No, that could be...I submitted to this, a list of all of the publications at the time. We had perhaps a dozen or a dozen and a half, that box labelled 'employee communications', and that's if you are going to work with asbestos, PVC, diatomaceous earth, asphalt, or whatever...fiber glass...it covers.

30

Q. So that is what is given out to...?

A. Well, it's more than given out. Its an

5 A. (cont'd.) educational program that is given out, with explanations, opportunities for questions, and the like, as well.

Q. I don't understand. Is it a seminar type of educational program?

10 A. Yes, I guess you...well, it's where...if there are plant management safety...management/labour health and safety committees, that might be the vehicle for its dissemination.

I might go to a plant and talk...Dr. Paul or Mr. Raitze, or Dr. Borks. It would vary.

15 Q. Does the corporation have a policy with respect to the criteria for identifying asbestos-related diseases?

A. Oh, those are the generally-accepted ones, yes - the criteria for accepted related diseases are what any standard textbook of chest diseases would show...the book by Henshaw...the book by Parkes - I guess that is the standard occupational lung disease book. So, yes.

20 Q. But is that published in a memorandum form?

I understand what you are telling me, but is it republished or rewritten onto...

25 A. Oh, it's part of the...we have movies which the employees see regularly in which the relationship of excessive asbestos exposure in combination with smoking results in lung cancer, appropriately in terms of dose. etc., etc., making the point of the critical role of smoking.

It further emphasizes that indeed there has been an increased risk observed to mesothelioma, emphasizing that there is no evidence of a smoking component for this risk associated with excessive exposure.

30 It explains asbestosis - how many times I've

5 A. (cont'd.) gone to the board...literally hundreds of pictures of the trachobronchial tree with the terminal bronchioli, alveolar sacs, that disappear into the air spaces and replace them by scar, and so on.

As I say, yes, the program is more than just putting it in an envelope, distributing it and hope that maybe it won't be thrown into the wastebasket.

10 We have...by golly, this might be a good thing. May I volunteer to the Commission copies of all of our educational materials?...our films, our slide seminars, our pamphlets, our brochures, our booklets...we have been helpful to unions. If you will look at the movie on asbestos by the Oil, Chemical and Atomic Workers Union, you will see in the credits at the back - thanks to OSHA for giving us enough dough to do this...thanks to the Bureau of Mines for letting us go in... thanks to Johns-Manville for letting us take pictures in their operations and providing us with medical consultation.

15 And again, this is a union - Oil, Chemical and Atomic Workers - that cannot be identified as not being an activist union, and not one that doesn't stand up for its rights.

20 So education has been a major activity and whether you measure it by the weight of all of our pamphlets and brochures, or by the inches and feet of film, it's all there. Perhaps we ought to submit it to you.

25 So we do have this educational program.

Q. I understand that there are several bills before Congress, dealing with the question of compensation for...

A. Yes, sir.

30 Q. ...persons injured as a result of working with asbestos. Perhaps could you just explain generally what the nature of the proposals are?

A. I really can't, only because of the fact that

5 A. (cont'd.) most have come...I would mightily involved while working for the company, but the bills that were introduced while I was still with the company...in the House of Representatives, the bill by Congresswoman Fenwick; in the Senate, the bill by Senator Hart; are both passe. Consequently there has been a replacement bill, a bill by Congressman Miller, George Miller, which I have not seen, and in the normal course of events I would have been involved even in the course of the evolution of the bill, since a friendship dating back forty years with Congressman Miller when he was sitting on my knee... literally...I wouldn't put it into the record...anyway.

10 Q. But the two bills that have died, what can you...can you just tell us what the thrust of those bills were?

15 A. Oh, yes. The thrust of the bills were that the workers injured, disabled by asbestos would be the recipients of compensaton to be determined by an appropriate formula, with a fund to be established involving asbestos producers, asbestos product manufacturers, and because of the preponderance of cases from workers in shipyards, and since the federal government either had civil servants working in the shipyards or contract people working in the shipyards, and the federal government in the guise of the navy had the responsibility for the workplace no less than we have responsibility, or the corporation has a responsibility, the government should be party to the contributing to the fund.

20 These would provide prompt...I think the words were prompt, fair, equitable payment on the basis of a mechanism not unlike your own Workmen's Compensation...

25 Q. That's just what I was going to say.

30 A. ...not unlike, but not as good. Not unlike, but not as good.

5 Q. Why wouldn't that system...I mean, the general proposal...the broad outline sounds very similar to Workmen's Compensation. Why wouldn't that be in place with the workers' compensation schemes that exist in I believe, every state?

A. Because one thing is that the bill also includes a waiver of resort to tort litigation.

What?

MR. LASKIN; No third party claim.

10 THE WITNESS: No third party claims, that was part of the legislation.

MR. STARKMAN: Q. Is that not a part of...I take it it is not a part of most...

THE WITNESS: A. It's not the part...

15 Q. ...workers' compensation schemes as they presently exist?

A. Yes. See, what it...no, the...you see, workers' compensation in the U.S.A. is a very strange thing.

20 First of all...and I do wish, and the record will show and somebody, I hope, would clip it out and mail it to Mr. Samuels, Mr. Taylor and Mr. Kirkland of the AFL/CIO... and that is, organized labour shares with management the responsibility for the dismal state of workers' compensation in the U.S.A.

25 If one can go through the records of organized labour, one would find that they have devoted as little time to it as any constituency in terms of forwarding it, increasing the likelihood of fair, equitable compensation.

30 We really don't have a compensation system that is equitable to the point where we could piggyback this on, and now I'll come back to your question. Because the same injury in fifty different states can result in fifty contrasting awards, and I mean where there is no argument about let's say

5 A. (cont'd.) this hypothetical person who is seventy percent disabled permanently, can come away with...well, orders of magnitude would be an exaggeration, but certainly multiples of difference in what they would get on the basis of state compensation schedules.

10 We have our progressive, forward-looking states, and we have our states that are not so forward-looking and progressive. So really piggybacking anything in workers' compensation would be taking a 1945 Ford and trying to ride down the Queen Elizabeth expressway.

Q. You don't know what the present bill before Congress, what it..

15 A. Well, I think first of all...I really don't know, but it would be so easy for you to get a copy of the bill, and if you don't have one...

Q. You're not involved with that any longer?

A. Zero.

20 Q. I know you have retired from Johns-Manville, but I understand you still continue on in a consulting type of role?

25 A. I do, but basically the consulting is on the basis of professional skills as distinguished from policy skills, and corporate attitude vis a vis the workers' compensation bill would be a policy decision, which I would have no right to do anymore than I...I am a consultant to the Environmental Protection Agency, I am a consultant to the Food and Drug Administration. I don't make any policies for them either. I just, presumably, bring whatever expertise I have.

MR. STARKMAN: Those are my questions.

DR. DUPRE: Thank you, Mr. Starkman.

30 Miss Jolley?

CROSS-EXAMINATION BY MISS JOLLEY

5 Q. I think to follow up on the compensation, because last time you were here, away back a year ago, or almost, we were presented with a number six in that, and that was the testimony of the hearings of the subcommittee on labour standards, and I wondered if I could just ask you a question on that. I didn't get a chance last time.

10 A. Absolutely. Sure.

Q. Granted, on page five hundred and thirty-four, and I'm not sure whether you have this, I'm sorry.

MR. LASKIN: No.

MISS JOLLEY: Perhaps...it's the old compendium, unfortunately.

15 THE WITNESS: I would like, if I'm going to be asked to respond to something, I sure would like to read it.

MISS JOLLEY: Q. Or I could just read you the question to see whether...

20 THE WITNESS: A. No, even then...no...can I sit beside you?

Q. Perhaps I could just read it while we are getting it, and then you can decide whether you would prefer to.

A. Yes.

25 Q. It's actually a comment by Mr. McKinney, but you were with Mr. McKinney.

A. Yes, I recall.

Q. And it says: "Well, let me see, we are no longer in the brake...". I'm sorry, this is the wrong one. Sorry about that.

30 I'm sorry. It's on page five hundred and forty-five.

DR. DUPRE: Of tab six?

MISS JOLLEY: Yes. Tab six of the original

5 Kotin submissions.

DR. DUPRE: Oh, yes. Okay.

MISS JOLLEY: Q. Okay. On page...

DR. DUPRE: I can...since I've got it, I can
just give it to Dr. Kotin.

10 Page five forty-six of tab six, and that was...

MISS JOLLEY: Okay.

THE WITNESS: Five forty-six?

MISS JOLLEY: No, five forty-five.

THE WITNESS: Five forty-five? Okay. Thank you.

I have it.

15 MISS JOLLEY: I'm having a real problem with
numbers.

THE WITNESS: Go ahead.

Q. Okay, it's towards the bottom of the page, and
you are discussing compensation.

Mr. McKinney says, quote:

20 "Well, one class which you have left out is
nonworker. We think that in view of the
circumstances, the whole medical history and
everything, that anyone who has an asbestos-
related disease should be compensated, whether
they are a worker or not".

25 A. Mr. McKinney said that and I was right beside
him, yes.

Q. Right. And presumably that is a Johns-Manville
policy then, is it?

A. Chairman of the board, yes.

30 Q. Right. So presumably that would be a Johns-
Manville policy.

Q. (cont'd.) Could you indicate to us what you think that means?

A. Surely.

It means that we have...Mr. McKinney has taken the position that where familial...where cases of asbestos-related disease have been identified, for instance I guess the classical one is the housewife shaking out the overalls preparatory to putting them in her washing machine, and getting a dose adequate to result in an asbestos-related disease...that some form...that this bill, where there is no mechanism now, because basically the opportunities for multiple exposure are even greater outside the workplace than they are inside the workplace, that this bill would recognize...we already have one, Linda, thank you...this bill would recognize the fact that this fund...and I think Mr. McKinney earlier refers to this fund...would be a legitimate resource for compensation for these people with the para-occupational, I guess is the right word, para-occupational exposure.

Q. Would you make a recommendation that we should consider that as well?

A. Well, I would only to the extent that I could be aware of the totality of...you know, I'm not here to...let me answer your question differently.

The earlier part of the afternoon notwithstanding, what's good north of the border is good south of the border, and vice versa. Surely if a compensation program could be identified in the States...you already have it here...and I don't know much about this bill...but, yes, I would say Mr. McKinney, testifying before the Ontario Legislature...or House of Parliament...much the same as he testified here, would state the same thing exactly.

Q. Perhaps I could draw your attention to page five thirty-four now, and I don't think again it's necessary that

Q. (cont'd.) it's necessary that you have it...

A. I have it.

5 Q. But I was interested in the fact that Mr. McKinney again stated that Johns-Manville had developed a substitute for asbestos in brake linings, and I wonder if you could tell us about that.

10 A. In word, and I guess I'm not the right one to say, you can have a substitute for anything. Is it as effective... is it as safe....is it as economical as asbestos brake lining? No.

Q. But he did indicate that J-M had gotten out of the business of asbestos brake linings?

15 A. Yes. This, I think, is a decision that was made on the basis of corporate mercantile policy as much as any other, because brake linings, in common with many others, both manufacture and use, I think can be accomplished without any risk to those occupationally exposed.

20 Q. The one point that we never got to in the industrial medical officer's article that you, again submitted to us, thank you, was a statement that I found most interesting because we have an internal responsibility system in Ontario, which is a joint health and safety committee responsible for trying to solve problems in the workplace, and one of the questions that is being addressed is the issue of the relationships in those joint committees.

25 On page two forty-four of tab four...

A. Can I have it, please?

Two forty-four of tab four, yes.

30 Q. It's the point number eight, and you are discussing the role of the industrial medical officer and you say:

"To facilitate communication, co-operation

Q. (cont'd.) "and collaboration between management and the worker"...

A. Yes.

Q. This next sentence is the one I'm interested in: "The adversary relationship cannot be nor should be eliminated, but productive co-operation can flourish in an adversary condition, to the extent that effort and energies are not dissipated in distrust, antagonism and hostility."

We have had some indication from our Ministry of Labour that adversarial relationships are inappropriate in joint committees, and I wonder if you could elaborate on that?

A. If I were writing that chapter today, I would take the wording of your ministry. What I had in mind there was this, that to quote Mr. Anthony Nasaki, who until recently was responsible for health and safety for the Oil Chemical and Atomic Workers, Tony I think has taken the position, he had convinced me and maybe it's because I haven't been, like a Skinner pigeon, reinforced, that I'm now back to what I was before, but there is a certain amount of dialectics that would be necessary in the relationship in health, safety and environment - much the same as it is in cost of living and ten versus nine paid vacation days, and so on.

I guess if there were Newtonian Laws in medicine, where everything was the equivalent of a falling body accelerating at the rate of thirty feet per second per second, then there would be no need for anything other than complete and total...there would be congruity, there would be no argument.

But there are so many areas of ignorance, so many grey areas about which final conclusions cannot be made, that it is nice to bring different approaches to these grey areas - and that's in everything from a slide to a philosophic principle, to

5 A. (cont'd.) the things we were talking about earlier where you will get two positions...there was a trial in Washington not too recently - highborn and well-qualified psychiatrists didn't...I mean they were polarized.

So it's areas that there are a lack of complete information that I find it very...I think the process would not suffer from a certain amount of differing.

10 But that's what I thought. I don't now. I think that basically the community of interest in the area of health, safety and environment is so obvious that why should there be an adversarial relationship.

15 Another thing that I think has changed, and that is it is only recently - tragically - that organized labour has begun to develop...and I think I mentioned this earlier...has begun to accrue unto itself the equivalent of the corporate medical officer, so that now in dealing with the Steel Workers through a Dr. Parkinson, let's say, or with the Auto Workers through a Dr. Silverstein, there is a professional parity...and not as a judgement, but as a...you know, that basically the need for any differences has been obviated because if they bring to the discussion table the same level of competency...Dave is as good a doctor as any corporate medical officer I know, and Mike is as good a doctor as any corporate medical officer I know.

20 So do you understand the point I'm trying to make there is now an equality, rather than a parity, that allows us... us in the medical professions...to speak to one another on the issues, and now we can go jointly.

25 Q. In the real world, however, in Ontario, that's not necessarily true, and although David Parkinson and Mike Silverstein have operated in Ontario, they have got a big geographical job to do in the U.S., and they can't spend a lot of time here.

5 Q. (cont'd.) But in terms of the relationships between a union and management, especially a small union, clearly the power relationships in a workplace are not equal in those circumstances and, yes, your idealized world would be wonderful, but I don't think it's real.

10 A. Again, it's difficult to speak for the workplace because that, again, is as heterogeneous an entity as you could want. A hazardous workplace, a potentially hazardous workplace, a nonhazardous workplace - other than carelessness or maliciousness on the part of the employer or the...so...but I would say that this difference in power that you say is one that is narrowing.

15 Certainly the last administration in the United States, the one prior to this one - there I think you can use the word exponential increase in...I don't mean the power, not in the brute sense, but in effectiveness, influence and so on.

So there has been a tremendous narrowing of that gap.

20 Q. But in that sense that administration was perceived by management to be pro-labour.

25 A. Well, it wasn't perceived. I can cite you fifteen speeches of the assistant-secretary for OSHA who insisted that her job was to be pro-labour, and the director of NIOSH, I can cite you half a dozen speeches, and I have no quarrel if they do their job that way, but the perception by management is really not the whole story. What you are saying is right.

They, themselves...Tony, on the record he said, 'we are advocates'...you have heard him say it, have you not?

Not that you are being questioned, I don't mean...

Q. Yes, I have heard him.

30 A. Then you have heard him say it and that's the way he viewed his job, and more power to him if this is how he saw it.

Q. I just think that that also helped to equalize the power into...

A. That's the point I was trying to make.

Q. ...which is an important thing.

A. There has been this move towards it.

So again, I come back to my being a physician, and that is...and most of the people who practice occupational medicine... you didn't go to medical school, either I or any other physician in this room, to become an occupational, a management physician or a labour physician. You became a physician.

I don't want to start waving a flag, but that's it.

Q. Can I ask you, your comment this morning about respirators, you made a comment about the indication...respirators are an indication of management's failure to do it alone?

A. No, no. What I said was...oh, gosh, no! Respirators are an indication of engineering...I didn't say...if I did, I'm glad you asked me the question you did.

No, respirators are a protective device which has a place when engineering know-how does not exist to address a problem. It is interim - that I can't overstate. Engineering controls are the name of the game.

Q. I may have misinterpreted. I'm sorry.

A. Yes, but that's the game in town. And this why, again, I can say it as much as I want, but the record in terms of...that would be to profess a decline in industrial hygiene.

DR. DUPRE: Can I just ask you very much of a layman's question on this? It just has to do with your use of the term interim as far as various equipment is concerned.

THE WITNESS: Yes.

DR. DUPRE: From lay observations based on looking at a few plants, and reading some of our own research

5 DR. DUPRE: (cont'd.) reports, have led me to sketch the following not unlikely scenario where plants involving any of a number of hazardous substances are concerned, which is basically that through engineering devices, through automation, exposure levels to a hazardous substance in such plants can be reduced over time very, very substantially... indeed almost syntonically toward zero...but that in all such instances there is one kind of operation that remains, 10 which is the maintenance operation.

THE WITNESS: Exactly.

DR. DUPRE: And which might, of course, there involve respiratory equipment not as an interim measure, but indeed as the kind of thing that just is going to have to be used in that kind of work. 15

I don't have an erroneous impression?

THE WITNESS: No, you are absolutely right. Maintenance work is really the equivalent of the firefighter putting on his, excuse the expression, asbestos suit as he walks into a blazing inferno. Yes. 20

DR. DUPRE: I just wanted to make sure I had that one straight.

MISS JOLLEY: Q. I'm going back to health records, and I am not going back here.

I am just wondering whether the health records of Johns-Manville contain...and I'm not asking for specifics...but do they contain environment information, exposures, for the different workers? 25

THE WITNESS: A. Each individual worker, only since we have gone from area sampling...

Q. To personal.

A. ...to personal sampling. And for each individual...I really can't say for each individual worker, because 30

5 A. (cont'd.) you would take an allograph, as it were, of the group, but yes, it would have it since personal sampling has...area sampling is, of course, very easy. You can automate that. But that doesn't really give you a real picture of the employee's exposure.

Q. Will the area sampling also be in your data bank, however?

10 A. Yes.

Q. The historical ones?

A. Yes, to the extent that we have it.

Q. Will they be available to the worker on request as well, for his or her workplace?

15 A. Well, the law requires that you post your sampling data.

Q. Right. I guess the question is, when the worker goes to apply twenty years later or thirty years later for compensation, will he or she be allowed to have access to that historical data in defence of his...

20 A. I can't answer that. I do know that for at least the last ten years, however, twelve years now, availability of this data has been a matter of law under the Occupational Safety and Health Act.

Q. Right. It's just a question that if it's posted in the workplace it doesn't necessarily mean that a worker would keep a running record of his or her...

25 A. I can't tell you what the policy is. I just don't know.

Q. I would like to go to your...I think it's tab ten, the Today interview.

A. Yes.

30 Q. I would like to give you the readings from Johns-Manville Reeves Mine and from the Johns-Manville Canadian

Q. (cont'd.) products plant in Toronto, and those were introduced into the record on different occasions.

5 It's in the second column of your interview, towards the bottom, and you are discussing the whole issue of past exposures.

You are talking about asbestos-related disease:
"Exposure to excessively high levels of asbestos fibers in the air, as observed decades ago prior to the establishment of standards and installation of engineering controls and the development of appropriate work practices, has resulted in asbestos-related disease.
10 This is in marked contrast to current levels of exposure."

15 It's a statement that we have heard often from different companies, and I would like to refer you to the Reeves Mine readings that were carried out by the Jeffrey Industrial Hygiene Laboratory...

A. Yes.

20 Q. ...and they were carried out in November, or dated November 22, 1974, so presumably you were the head of health, safety and environment at that point.

A. Just barely.

Q. Right, right.

25 And presumably you would have seen these readings? Would these readings have come to your department? We had evidence..

A. They would have come to our department. I can't honestly say that I recall them, but if I had a bet, I would bet I saw them.

30 Q. Okay. On page two I would like to draw your attention to the TLV as stated, and the TLV as stated for the

Q. (cont'd.) Reeves Mine at that point was five fibers per cubic centimeter?

A. Correct.

Q. Can you explain to us why the hygiene department was using a TLV of five fibers per cubic centimeter when for two years we had a guideline of two fibers per cubic centimeter?

A. Where, in Toronto?

Q. In Ontario.

A. In Ontario? I can't explain it, because five fibers was the standard until July 1, 1976 in the U.S.A.

Q. In the U.S.

We had evidence from Mr. Reese and from Mr. Cashman that it was the policy of Johns-Manville to either apply the U.S. standard or to go to a more stringent standard, if that we required in the particular jurisdiction, and I'm wondering how we can explain why you didn't know what the TLV was.

A. Well, that might be because I was ignorant. That's the answer that...you must remember that I was with the company four or five months, there was a degree of orientation I had, so all I can do is give you an explanation, a rationalization but not an explanation for this.

Q. Nevertheless, there was a TLV, so that there were standards in Ontario, or guidelines in Ontario? You assume that to be true? I only introduce you to the Johns-Manville plant in West Hill as well, because the same TLV was used in West Hill in the study that they did in 1974, again.

A. There is no comment I can give you that would be any different than what I said.

Q. Right. In the Reeves Mine, can I draw your attention to some of the figures, and I have raised this before, I'm sorry to go over it with you, but I was cut off before I got

Q. (cont'd.) a chance to do it last time.

5 You will see figures of seventy-five, seventy-four, on page three or four, eighteen, twenty-six, etc., ending up in a figure of two twenty-five. I would like to ask you, in line with your quote that says exposure to excessively high levels of asbestos fibers in the air...do you think those levels are fairly high, excessively high? "As observed decades ago, prior to the establishment of standards"...do you think
10 that that is a fair statement for this document?

A. Well, this is obviously an exception. This is not decades ago.

Q. They had spent two million dollars on engineering controls, according to Mr. Vanderbeek in a letter to the Ministry of Natural Resources, so clearly it wasn't prior
15 to engineering controls.

I guess it concerns us that that statement is made while we in Ontario have actually had conditions in this decade like that, and our workers have been exposed.

A. I like to think that...and again all I can comment on is what I have done, recognizing the limitations in the statement I made, as you pointed out, and accepted, but
20 basically the Reeves Mine did have a very short life after that time, and indeed that the measurements in the Toronto plant... again, I don't mean it to sound that I alone did it, certainly not, but basically this is a situation that was addressed.

Q. You mentioned that you had a fairly substantial input to the closing of the Reeves Mine. Can I ask you, were
25 you aware of the fact that the Reeves Mine was ordered to be closed on February 11, 1975, by the Ministry of Natural Resources?

A. The mine was ordered to be closed, I learned
30 in a post-fashion, not at the time.

Q. And the decision to ultimately shut down was made after that closure?

5 A. Well, let me put it this way. The discussion antedated the ministry order by many, many, many months, I can assure you. Many months.

Q. I wondered if you...if I was to ask you if you have India, were you responsible for the plants in India and Mexico?

10 A. We were responsible for the plants in Mexico. In India, the Indian government is responsible for the plants. You don't sell asbestos in India to a plant, you sell it to a government cartel which operates the asbestos industry there. So that the plant in India, the situation in India is one where all Johns-Manville could do was exert influence, but had
15 absolutely no police powers at all.

The plant in Mexico City that we had was one that we did have a relationship. We didn't own it, but maybe had a part ownership, and I guess that's a matter of the record and you can find that out.

20 But yes, we trained the industrial hygienists for that plant and were involved with bringing the plant ...

Q. Can I refer you to the chairman of the board's bulletin again?

A. Sure.

25 Q. I want to go to actually the second-last bulletin and it's Asbestos Facts Number One, Policy Statement, dated April 16, 1980, and I think there is a similar statement made in your policy on the safe use of asbestos, or something.

A. Mmm-hmm.

30 Q. I asked Mr. Cashman this, and he suggested I refer it to you.

5 Q. (cont'd.) "Number two of the Johns-Manville policy is, we will not sell asbestos or asbestos-containing products where adequate precautions are not likely to be observed."

I wondered if you could tell us how you oversee that policy statement, how you enforce that, see that that happens, especially in the Third World?

10 A. Well, we do it in several ways. You brought up India a while ago. I think when the situation in India became known to us...in fact Mr. Hayes from then Jeffrey Mines took a group of engineering and manufacturing people to India, spent a week - or I can't remember what the exact time was - but basically there was immediate positive action to do something about it.

15 In other places where access to the activity is through government bureaus, we would try to, with the Ministry of Health of the country, see what could be done about that. It could run into anything from exquisite co-operation to exquisite obstruction.

20 What I think I'm saying is, there was no one way, and then what I say in the Third World, that every place that asbestos was sold we monitored with the same degree of intensity? The answer would be, clearly, no. It would vary.

25 MISS JOLLEY: Thank you. That's all.

DR. DUPRE: Dr. Uffen? Dr. Mustard?

DR. UFFEN: No, thanks.

DR. MUSTARD: No.

DR. DUPRE: I have no questions, Dr. Kotin.

30 May I, however, thank you indeed for having come back to be with us today and putting in another long and gruelling stay on the stand. Thank you very much.

DR. DUPRE: (cont'd.) Do I understand correctly
that we rise now until nine a.m...repeat...nine a.m. tomorrow
morning? Or is it ten?

I just distinctly recall that nine were the
instructions that were given to me.

Nine a.m. tomorrow morning, then.

THE INQUIRY ADJOURNED

THE FOLLOWING WAS PREPARED
FROM THE TAPED RECORDINGS
OF THE INQUIRY PROCEEDINGS

Edwina Macht
EDWINA MACHT

